Law, Space and the City:

A Legal Geography of Urban Change in Post-Socialist Bishkek, Kyrgyzstan

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"Frunze – Our Capital[1]

Frunze, the capital of the Republic [of Kirghizia] and her most important centre … Its square blocks stand out most distinctly thanks to the row of poplars and plane-trees which stretch in a green frame around the streets. Parks and gardens occupy perhaps what is the largest territory of the city … There are many factories in the city and there number is growing year after year … Its big shops are equipped with the latest machinery.
[…]
The Kirghiz people would have been unable to build such an engineering colossus … It was only through the assistance of all the peoples of the Soviet Union, and especially the Russian people, that this could be achieved."

Kazy Dikambayev, (1960, 9)
'Kirghizia: Complete Transformation of a Former Backward Colony'

'Stadtluft macht frei'

Old German dictum ('city air makes you free') originating from the medieval period.

[1] Frunze was the official Soviet name for Bishkek from 1926 until 1991.

Summary

This thesis examines the role of law and legal practices in transformations of urban space in post-socialist Bishkek, the capital city of Kyrgyzstan. In doing so, the thesis contributes to the 'interdisciplinary project' of legal geography and expands on debates examining the relation between law and the city.

The thesis aims to fill several lacunae in legal geography and studies on law and the city. First, the thesis responds to a bias in knowledge production within legal geography through its focus on cities in the global North. Examining law and legal processes in Bishkek expands on the meaning of 'law' beyond Western liberal formulations by addressing the plurality and overlap of multiple legal spaces. Second, by drawing on legal processes unfolding in the post-socialist city, the over-emphasis on space in legal geography, to the detriment of time, is explored to examine how different time periods and time frames – the transition from 'socialist' to 'post-socialist' as well as the gradual shift from 'illegal' to 'legal' – feature in the everyday 'making' of the law. An appreciation of time in legal geography, responds to the processes and mobilities of law and space, countering fixed and static interpretations. Third, an emphasis on law and legal processes responds to a gap in urban theory where analyses of the 'legal' are often buried within economic and political questions. The thesis aims to show the importance of analysing the 'legal' as its own object of study in understanding transformations of urban space.

The role of law and legal practices in urban transformations is examined in relation to the case study city of Bishkek. Two connected entry-points are used to explore the relationship between law and urban transformations. The first examines the regulation of rural-urban migration in relation to shifting meanings of property while the second, investigates the legalisation process of a 'squatter' settlement on the urban periphery. Meanings and enactments of law and space are therefore investigated through the legal-spatial themes of internal migration, property rights, and illegality. This involves examining the persistence and continuity of legal spaces, despite official changes to legislation, as well as destabilising meanings of 'illegality' by examining the agency of both state and non-state actors and material and non-material components in law making processes.

The thesis draws on a 'mixed method' technique by combining legal doctrinal analysis with ethnography. The thesis therefore relies on two distinct epistemological traditions in formulating a research narrative. Doctrinal analysis responds to a positivist notion of searching for the 'truth' internally within the body of law, while the ethnographic methods employed emphasise the partiality of scientific knowledge production. In formulating an understanding of the law and legal processes that relate to the empirical themes of this research, analysis of Kyrgyz and international law were combined with seven months of ethnographic fieldwork in Bishkek. The ethnographic research was largely based on semi-structured interviews and 'shadowing' applicants through various legal and administrative procedures.

The thesis argues that studies on legal space require an appreciation of temporality and process. Legal spaces such as the 'squatter' settlement on the urban periphery, or the 'city' more broadly, are performed and produced over time. An emphasis on temporality demonstrates how processes are sometimes disconnected from official changes in legislation and are, instead, embedded within historical trajectories. From a policy-based perspective, the enactment of legislation is not, on its own, a solution to urban problems. This reductionist perspective of law and urban space bolsters notions that both are detached from historical, economic and political processes rather than recognising their constitutive, produced, and fragmentary nature.

Key words: *legal geography, law and space, internal migration, illegality, property, Bishkek, Kyrgyzstan*

Zusammenfassung

In der vorliegenden Dissertation wird die Rolle von ‚Recht' und ‚legaler Praxis' im post-sozialistischen Bischkek, der Hauptstadt Kirgistans, analysiert. Von Interesse ist die Transformation des städtischen Raums und der damit verbundenen Gesetzgebung nach dem Kollaps der Sowjetunion. Im Zentrum der empirischen Untersuchungen stehen die Veränderungen der Gesetzgebung zur Regulierung der Eigentums- und Besitzverhältnisse sowie der Einwohnerregistrierung. Im Zuge der Migrationsbewegung aus ländlichen Regionen Kirgistans nach Bischkek entstanden an den Aussenbezirken der Stadt Squattersiedlungen. In diesem Kontext wurde die Produktion von ‚Recht' und ‚Illegalität' untersucht. Forschungsansätze der Rechtsgeographie, der Stadttheorie und post-sozialistischer Analysen bilden die Grundlage für das Verständnis, wie ‚Rechtsräume' in Bischkek produziert werden. Methodologisch basiert die Arbeit auf zwei bislang unverbundenen epistemologischen Traditionen, der dogmatischen Auslegung von Gesetzen und der Ethnographie.

Es wird argumentiert, dass den Aspekten Zeitlichkeit und Prozesshaftigkeit eine grosse Bedeutung zukommen, um zu verstehen, wie ‚Rechts-Räume' entstehen und sich verändern; denn sowohl ‚legale' Räume als auch eine 'illegale' Siedlung an der städtischen Peripherie oder die 'Stadt' werden im Laufe der Zeit produziert. Erst die Einbeziehung von Zeitlichkeit ermöglicht es zu erkennen, wie die alltägliche Praxis oftmals abgekoppelt ist von den offiziellen gesetzlichen Änderungen, und statt dessen auf vergangene legale Strukturen Rückgriff nimmt. Aus einer politischen Perspektive lässt sich festhalten, dass einzig der Erlass von Gesetzen nicht zu einer Lösung städtischer Probleme beiträgt. Diese reduktionistische Perspektive unterstützt die Vorstellung, dass Gesetz und städtischer Raum losgelöst sind von historischen, ökonomischen und politischen Prozessen, und erkennt deren konstitutive, produzierte und fragmentierte Beschaffenheit deshalb nicht an.

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Lastly, a trip to Australia during the final months of this thesis to visit my brother and his wife, Matthew and Leona Hatcher, and my new niece, Florence, put everything into perspective. I dedicate this thesis to Florence, although I do not expect her to read it for at least a few more years.

August 2014, Zurich

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List of Acronyms

AUCA	American University of Central Asia
CLS	Critical Legal Studies
ECE	Eastern and Central Europe
FSU	Former Soviet Union
GDP	Gross Domestic Product
GIS	Geographical Information Science
HOA	Homeowners Association
ICG	International Crisis Group
IM 2002	Kyrgyz Law on Internal Migration 2002
IMF	International Monetary Fund
NCCR N-S	National Centre of Competence in Research North-South
NGO	Non Governmental Organisation
OSCE	Organization for Security and Co-operation in Europe
SMP	Special Means Payment
SRS	State Registration Service
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UN-Habitat	United Nations Human Settlements Programme
USD	United States Dollar
USSR	The Union of Soviet Socialist Republics
WTO	World Trade Organisation

Note on transliteration

Research for this study was conducted in Bishkek where two main languages meet: Russian and Kyrgyz. Both languages use the Cyrillic alphabet. In this thesis, I use the US Library of Congress system of transliteration for Russian words. For Kyrgyz words used in the text, I use the same system of transliteration as that used for Russian, with the following exceptions: Ж = J; Ө = Ö; Ү = Ü. All foreign terms are Russian unless indicated. For ease of reading and understanding, I have used English plurals rather than a transliterated version from Russian or Kyrgyz (e.g. *novostroika,* meaning an informal settlement, is transliterated to *novostroikas* rather than *novostroiki*, in the plural form).

Glossary

Aksakal (kg)[2]	'White beard', respected elders
Ayil ökmötü (kg)	Village Government
Chai	Tea
Domoupravlenie	Administrative Housing Office for multi-occupancy buildings
Glasnost	Openness
Kolkhoz	Collective Farm
Kvartal'nyi	Administrative Housing Office for a group of individual buildings
Laposhka	A flat round bread
Mikroraion	A neighbourhood unit (lit. 'micro district')
Novostroika	Informal settlement (lit. 'new construction')
Obshchezhitie	Dormitory (lit. 'communal living-place')
Oblast'	Province or Region
Pasportnyi stol	Passport Office
Perestroika	Restructuring
Priezzhie	Newcomers
Propiska	Residence permit
Raion	District
Registratsia	Registration – modern term for *propiska*
Sovkhoz	State-owned farm
Starozhily	Old-timers
Vypiska	De-registration from place of residence
Vremianka	Temporary House
Zakhvatchik	Squatter or Land Grabber (lit. 'invader')

[2] (kg) denotes Kyrgyz language, the other terms are in Russian.

Prologue: Reflections on law and space

6 June 2011, Bishkek

Sitting in an air-conditioned office, escaping the Bishkek heat in June 2011, Nazgul, an employee of an international company, explains to me that she needs a new passport so that she can travel to Europe for her job this summer.[3] She is visibly agitated and stressed as she tells me that in order to get the new passport, she must also update her residence permit (*propiska*) for the city, as this expired some weeks ago.[4] The *propiska* includes the address of where Nazgul lives and therefore determines which local district will issue her with a new passport. From a list she is clutching, Nazgul begins to count the documents she will need in order to apply for a new *propiska*: "ten different documents, TEN!" she exclaims.

Coming from Batken, a province (*oblast'*) nestled between the borders of Tajikistan and Uzbekistan in the Ferghana valley region, Nazgul moved to Bishkek over twenty years ago to study in the city and has lived there ever since. After initially living in one of the city's many student dormitories (*obshchezhitie*), she began to rent an apartment when she started working. Nazgul explains to me that she has a good relationship with her current landlord, but nonetheless, as with most tenants in Bishkek, she has no written agreement of the tenancy contract. Coupled with this, the landlord refuses to allow Nazgul to register against the property in order for her to obtain a *propiska*. "Why?" I ask, curiously. "Because [the landlord] thinks I could claim some sort of ownership of the apartment if I were registered there." "How?" I ask, confused. "It's something to do with me being registered at the address, it gives me rights … I don't know." Clearly, and rightfully, more concerned with her own issues rather than discussing the intricacies of Kyrgyz property law with me, I agree to meet her again in a week or so, "by that time, I will have figured something out", she says.

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[3] All names have been changed in this thesis.

[4] The *propiska* – now officially called *registratsia* – is a type of resident permit in the form of an identity card. When an individual moves permanently from one district to another district in Kyrgyzstan, they must de-register (i.e. obtain a *vypiska*) from the place where they are moving from, by submitting various forms and proof of identity to the local administration of that district, and then register with the local administration at their new address (i.e. obtain a *propiska*). Officially, the applicant must register within 5 days of moving to the new address (Law on Internal Migration, 2002). The procedure is slightly different if the individual moves for a temporary period (defined as less than 45 days) (ibid.). The *propiska* is important for accessing local public services such as schools and health clinics in the city (see Azimov and Azimov, 2009). Moving house *within* Bishkek also officially requires registration of one's new address. Nazgul's *propiska* has expired because she could only register for a temporary period at her current address. Section 4.3 discusses the history of the *propiska* in more detail.

14 June 2011

It's over a week later, and I am meeting Nazgul again in her office. She seems happier. Nazgul tells me how she has made several phone calls to her friends and various acquaintances working in the passport system in the city. After several days of thinking it over, one of her friends has agreed to register Nazgul against her sister's house. Nazgul has already started the first part of the registration process by visiting the housing management office (*domoupravlenie*) for the house where her friend's sister lives. Nazgul must register herself as living in the building. She seems keen to tell me the procedures she had to follow at the *domoupravlenie* in order to, eventually, get her new *propiska* and begins to explain to me an encounter she had with a housing official earlier that day:

> "The woman in the office asked me: 'is it legal or illegal?' We said, 'it's illegal'. She immediately understood and said, 'do you want me to process your documents through our accounts department at this *domoupravelnie*? If they are processed here, one more person will be added to your utility services and you will have to pay more for water, and for some other things'. So we immediately understood that even this could be avoided! We said, 'we don't want this to be shown on the utilities', and the woman said 'fine, no problem'. But I wasn't sure if my friend would like it, she is a *very* principled lady, in some points *too* principled, in other points flexible, so I wasn't sure … but on the other hand, if she doesn't pay for extra utilities it would be good for her, so we said 'let's make it illegal without processing it through the accounts department', the woman said, 'OK, fine'."

After explaining another aspect of the onerous procedure, Nazgul explains to me, how, with the mutual decision of her friend, she decided to shift the process back from 'illegal' to 'legal'.

> "The owner of the house called her sister and told her the whole process. They decided not to be illegal, because, anyway, they are legally registered in this place, and I already agreed to pay them for the extra cost of the utilities. I called the woman in the *domoupravleniye* the next day and told her to process it legally through the accounts department. She said, 'that's no problem'. I hope she has done it now. I told my friend to check this in a few months' time."

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Following the second meeting with Nazgul, I was curious to check the Kyrgyz law on tenancy contracts and the identification documents required to obtain a *propiska*:

Civil Code of the Kyrgyz Republic from 5 January 1998, No. 1 (amended 10 June 2011, No. 2)

[…]

Article 545. Tenancy Contract
1. The Tenancy Contract must be concluded in writing
[…]

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Law of Kyrgyz Republic on Internal Migration from 30 July 2002, No. 133 (amended by the Law of the Kyrgyz Republic on 16 October 2002, No. 144)

[…]

Article 14. Documents required proving the identity of the citizen in order for registration [propiska]
1. Passport
2. Birth Certificate for citizens under the age of 16
3. A Military Certificate for citizens who have performed military service
4. A Military Card for the citizens currently performing military service
5. A certificate of release from prison – for citizens released from prison
6. ID card

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22 September 2013, outskirts of Bishkek

Sitting in another office with my research assistant, Mira, this time in September 2013 and in an 'illegal' settlement (*novostroika)* on the outskirts of Bishkek, I discuss with Aina, an administrator (*kvartal'nyi*) for the settlement, the settlement's ongoing legalisation process. I have been following the process since my first visit in January 2011. The legalisation process of the settlement was intimately linked to the *propiska* issue I was exploring as the residents were living in illegal properties and therefore had no official address to register against in order to obtain a *propiska*. In 2011, during my first visit to the settlement, a lack of *propiska* was causing problems for the residents as they needed proof of address to send their children to the local school and health clinics in the city. Aina explains to me how the residents have managed to overcome these issues:

> A: "We established an initiative group where we appealed to the City Mayor saying that 'we people of Ak-Jar don't have a *propiska*

and we have difficulties with [accessing] schools, health clinics, and kindergartens!' We asked them to help, and even appealed to the Prime Minister. Eventually, the Mayor's Office made a [legal] Resolution and we now have access to one doctor and two nurses from Ak-Bata [a neighbouring *novostroika*]. As for the school, we appealed to the Ministry of Education, and they allowed us to send our children to schools in Ak-Bata, Kelechek, and also school numbers 10, and 64. These schools are nearer to us; as you know, it's difficult for the children to go too far away. The Ministry sent letters informing the principals of those schools."

On the illegal status of the settlement, Aina confidently and cogently describes the current stage of the legalisation process:

A: "In order to formalise the settlement we need to have a General Plan[5] which costs about 495 000 Soms [9,500 USD]. We organised a group meeting of the residents saying that we can't wait for the government; we must collect the money now and draw a General Plan. So, the residents agreed, but there are some houses with problems. All in all, we collected 495 000 Soms, and we sent 365 000 Soms [7,000 USD] to the Planning Institute saying we already have a plan. But now, the head of the Planning Institute is not signing the General Plan! If he signs it and sends the documents, the Decree on formalisation will be issued … The Mayor has said, if [the local administration] drafts the Decree, I will add them to city. But the head of the Planning Institute is stopping all these procedures!"

CH: "Why do some houses have 'problems'?"

A: "There are 211 houses that are on top of a gas pipe line and another 9 houses underneath high power-voltage lines. We are not including them in the General Plan. Maybe they will be moved to another place. I don't know what they will do."

CH: "What are the residents of those houses saying?"

A: "Some people, who do not understand [the legalisation process], are saying that we are separating them [from the rest of the *novostroika*]. There was a very funny situation; one [resident] came and said that we are guilty - that we went and told the government that there is gas pipe line there, and if we hadn't said anything, they would not have noticed it. But the government built it; it is written-down! They don't want to understand. But, you can really smell gas there! We don't know yet what the government will decide."

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[5] A General Plan, often referred to as '*GenPlan*', is an architectural drawing of the settlement. Officially, the Bishkek Architectural Authority is supposed to draft the plan.

These opening vignettes from my field research in Bishkek serve as a departure point for exploring the central theme of this thesis: productions of law and space in the post-socialist city. Why is the legal relationship between Nazgul and her landlord not formalised in a written contract despite what is stated in the Civil Code? Does Nazgul have any authority over the legal relationship with her landlord whereby Nazgul, as a tenant, could request a written contract to protect her property interest? Why does Nazgul have to collect ten different documents in order to register with the passport office when the Law on Internal Migration stipulates a maximum of six are required, of which only two apply to her? How does the woman in the *domoupravlenie* have the authority to decide whether a legal or illegal procedure is followed? Why did the Mayor's Office decide to help the residents by organising a doctor and two nurses and school places despite the 'illegal' status of the *novostroika*? And, why does Aina state that it is one man alone, the head of the Planning Institute, that seems to hold the fate of the legal status of the *novostroika* in his hands?

Map 1: Kyrgyzstan and bordering countries (source: nationsonline.org).

PART I: Framing the Research

1. Introduction:
Defining the research agenda

This thesis seeks to understand how the overlapping and interconnected processes of law and space unfold in the post-socialist city of Bishkek, Kyrgyzstan. In doing so, the thesis aims to contribute to the interdisciplinary project of legal geography and expand on studies investigating the relation between law and the city.

Debates from legal geography are used to demonstrate the socially constitutive and produced character of law and space (Blomley, 1994; Delaney et al., 2001; Holder and Harrison, 2003; Benda-Beckmann et al., 2005; Benda-Beckmann et al., 2009c; Martin et al., 2010; Delaney, 2014). Within the framework of legal geography, existing studies on law and the city are introduced as a means to explore the theoretical disconnect between definitions of the 'city' in legal discourse and critical urban theory (Frug, 1980; Frug, 2010[1999]; Brenner and Schmid, 2011; Valverde, 2012). Scholars of legal geography acknowledge that theory building on the relation between law and space draws largely from cities in the global North (Braverman et al., 2014). This thesis develops a theoretical framework to explore legal and spatial processes unfolding in the post-socialist city as a means of 'universalising' these existing studies. In doing so, the thesis incorporates concepts from critical urban theory, legal anthropology, and post-socialist studies to form a more robust framework for exploring the relation between law and spatial processes in the post-socialist city.

These debates over law, space and the post-socialist city are explored through the case study city of Bishkek, the capital of Kyrgyzstan (see Map 1). Two empirical entry points are used to examine legal space in the post-socialist city: first, the regulation of internal migration to Bishkek and second, the legalisation of a 'squatter' settlement (*'novostroika'*) on the urban periphery. The production of legal space (Lefebvre, 1991; Delaney et al., 2001; Blomley, 2003; Butler, 2009) is understood through these interlinking sub-cases. An emphasis is placed on how these productions alter over time within the transition from 'socialism' to 'post-socialism' and its accompanying neoliberal enactments, together with the more localised transition from 'illegal' to 'legal' and how this unfolds within the wider 'post-socialist' transition. In turn, analysing the relationship between law

and space destabilises these reified categories and the labelling of cities as 'socialist' and 'post-socialist' (c.f. Hann et al., 2002; Hörschelmann and Stenning, 2008) and urban developments as either 'legal' and 'illegal' (c.f. Roy, 2005; Van Gelder, 2010). The thesis therefore aims to highlight the overlapping, mobile, and performative aspects of *legal space* and how the multiplicity of these legal spaces co-exist and contradict with each other and fade in and out over time (Santos, 2002; Benda-Beckmann et al., 2005; Benda-Beckmann and Benda-Beckmann, 2014).

In understanding the relation between law and the city, this thesis combines two distinct epistemologies. First, a doctrinal approach to analysing law undertaken by both academic and professional lawyers and second, an ethnographic approach derived from social science research methods, which aims to shed light on how law works in everyday urban contexts. This thesis therefore uses a 'mixed-method' research methodology (Nightingale, 2003). This mixed approach combines the 'partiality' of both legal doctrinal methods and ethnographic techniques as a way of melding different types of research data. As Valverde (2009, 153) notes: "[i]n order to avoid socio-logical reductionism and better understand the 'how' of legal mechanisms, analyses need to be simultaneously 'inside' and 'outside' law and simultaneously technical and theoretical, legal and socio-legal." This study therefore uses a 'mixed method' approach to combine an understanding of the technicalities of the law as well as the "social relations of power within which law governs" (Valverde, 2009, 154).

1.1 Unpacking (il)legal space

But what is 'law'? And why is space an important lens for examining law? This thesis seeks to unpack dominant notions of 'law' developed in Western liberal theorisations that structure legal practices as separate, above and detached from society (Delaney et al., 2001; Holder and Harrison, 2003; Blomley, 2008; Braverman et al., 2014). Seen in this way, law is "constructed and legitimated as a set of abstract, acontextual statements" (Clark, 1989, 439). This ensures the law is beyond reproach and occupies a "higher, sanctified, playing-field where it operates to ensure just and equitable outcomes" (Imrie and Thomas, 1997, 1402). In countering these notions, this thesis draws on everyday, local, and contextualised versions of the law (Sarat and Kearns, 1993; Chouinard, 1994) to understand how it is reproduced and appropriated by individuals, social groups and materialities (Latour, 2010; Martin et al., 2010). The thesis therefore aims to contextualise law within socio-political and socio-

material structures to present a fine-grained analysis of legal practices and, in particular, to emphasise the agency of different actors over productions of legal space.

Destabilising these liberal principles of law draws attention to the notions of plural and multiple legal orders developed in legal anthropology (Santos, 2002; Cotterrell, 2006; Benda-Beckmann et al., 2009b; Merry, 2005; Tamanaha, 2011). Plural legal orders exist in the recognition of laws outside, but often operating alongside, state legal frameworks, such as customary, folk or religious laws (Beyer, 2014). As well as these different legal orders, state law making practices are also internally multiple and fractured, especially as the process of law production operates increasingly at the international and supra-national level (Randeria, 2008). This plurality of legal orderings operating through a variety of different scales – municipal law, state law, international law, as well as in more spatially liminal jurisdictions of religious and customary law – highlights a multiplicity of legal space that is "superimposed, interpenetrated and mixed in our minds and our actions" (Santos, 2002, 473).

Taking a spatial lens to law – what Delaney (2014) refers to as a 'legal-geographic' mode of inquiry – challenges the universalising principles of law by unsettling the equating of law or legal enactments with equality and value-free implementation across space (c.f. Fernandes and Varley, 1998). Examining law through a spatial lens recognises "that both are 'produced' and are constituted through (and help to constitute) social structures and social action" (Martin et al., 2010, 177). A legal geographic mode of inquiry takes the notion that the production of space (Lefebvre, 1991) is under construction and always in the "process of being made" (Massey, 2005, 9) and that law is "best understood as emerging through a process of continuous construction and reconstruction" (Schauer, 2005, 498). As Harvey (2000, 178) notes in quoting Thomas Jefferson, "there is nothing more unequal than the equal treatment of unequals". Thus, this thesis counters ostensible notions of law operating evenly across space by emphasising its socially constitutive nature, which produces uneven spatialities and marginalises certain groups while privileging others (Unger, 1977; Delaney, 2014). Taking a spatial approach to the law therefore reveals the normalising and ostensible pre-given boundaries that imbue legal discourse (Blandy and Sibley, 2010). These boundaries separate, categorise and create 'otherings' of space and mask them under the legal fiction that presents law as separate from society.

1.2 'Globalising' law and urban space

Urban space plays an important part in this thesis. The empirical entry-points of examining the regulatory practices behind people moving to Bishkek and the legalisation of a 'squatter' settlement on the urban periphery require an exploration of the legal spatial dynamics behind these processes unfolding in the city.

The relation between law and the city is regarded as an under-theorised area of study both in legal geography (Blomley, 2012) as well as urban studies and law - both socio-legal and doctrinal studies - more broadly (Imrie and Thomas, 1997; Fernandes and Varley, 1998; Philippopoulos-Mihalopoulos, 2007; Valverde, 2012). Critical urban theorists tend to bury legal questions within other economic, political, and social relations (Fernandes and Varley, 1998; Valverde, 2012). Legal discourse, on the other hand, regards the city merely as a 'creature of the state', serving as an agency of its power (Frug, 1980; Hartog, 1983; Frug and Barron, 2006; Blomley, 2013b). The thesis aims to offer a deeper historical understanding of this theoretical disconnect between these two research fields but also draws on a similarity between critical urban theory and critical legal studies that draws on the (international) regulation of urban practices through a market-driven agenda (Frug and Barron, 2006; Brenner et al., 2011).

A focus on Bishkek enables this thesis to also contribute to emerging conceptualisations of knowledge in urban studies and geography that aim to provincialise studies largely informed by Western contexts. These studies perpetuate a false universal applicability (Kandiyoti, 2002; Chakrabarty, 2008; Roy, 2011). In 'globalising' urban theory, Robinson (2006) calls for a turn of attention towards cities of the global South in theory-building and knowledge production on urban processes. Urban theory, she notes, has been hampered by the dichotomy between innovative 'global cities' in rich countries and impoverished cities of the 'third-world.'

In joining studies that critique the universalising theories of urban research, the dissertation aims to contribute to knowledge on law and the city that has largely developed through case studies based in the global North (Braverman et al., 2014). Certain key cities contribute to theory building on law and space, including Toronto (Valverde, 2008; 2012), Vancouver (Blomley, 2004, 2011) and Bristol (Layard, 2010). Drawing on the case study city of Bishkek not only incorporates a new regional context (Central Asia) and 'type' of city for comparison (a 'post-socialist' one), but also contributes to theory building through its transitional character as it moves from 'socialism' to 'post-socialism'. In exploring urban

transformation in Bishkek, the thesis examines the blending, mutation, and merging of 'socialist' and 'post-socialist' legal space and its reproduction in everyday practice (c.f. Golubchikov and Phelps, 2011).

1.3 The city in transition: time and temporality

This study emphasises the importance of examining urban transformation by exploring temporalities of legal space. The neglect of time in legal geography stems from an (over-) emphasis on space and spatiality that has become popular more broadly in the social sciences (May and Thrift, 2001; Soja, 2010; Benda-Beckmann and Benda-Beckmann, 2014; Valverde, 2014). This recent privileging of space countered a dominant trajectory in the social sciences of valuing historical thinking over spatial thinking (Soja, 2010).[6] As Foucault (1980a, 70) notes of critical theory: "Space was treated as the dead, the fixed, the undialectical, the immobile. Time, on the contrary, was richness, fecundity, life, dialectic." The importance of a recent appreciation of the spatial is certainly not denied in this study, especially in terms of highlighting the uneven geographies of law's universalising principles. Instead, the Kantian splitting of time from space is rejected. This thesis takes the approach that time is intimately linked to space and both need to be analysed in unity to each other (c.f. May and Thrift, 2001; Massey 1994; 2005; Rogaly and Thieme, 2012).

The temporality of legal space is examined through the lens of urban change under post-socialist transformation. The path from a state socialism to 'democratic capitalism' in Eastern and Central Europe (ECE) and countries of the Former Soviet Union (FSU) took on a neoliberal agenda directed by the policies of international organisations such as the International Monetary Fund (IMF) the World Bank and World Trade Organisation (WTO) (Stenning et al., 2010; Golubchikov et al., 2013). The implementation of this neoliberal ideology in countries such as Kyrgyzstan resulted in the 'rolling back' of the state through policies such as the promotion of de-regulated markets, re-configurations of property ownership, state reduction of expenditure, and the promotion of individualism (Stenning et al., 2010). Scholars emphasise how these neoliberal policies undergo deep modifications as they meet post-socialist conditions (Hirt et al., 2013). Ethnographic studies therefore reformulate the linear transition from socialism to post-socialism by demonstrating a more differentiated understanding of change (Hörschelmann and Stenning, 2008). This change is theorised as hybrid and partial as socialist-era

[6] Here I am referring to the 'spatial turn' more broadly in the social sciences and beyond and the incorporation of space into social theory and questions over social phenomena (see Soja, 1989)

appearances are reoriented towards capitalist meanings and, simultaneously, capitalist interventions begin to take on, at times, a socialist quality (Golubchikov et al., 2013).

As Young and Kaczmarek (2008, 54) note, "[f]ormerly privileged sites under socialism, cities are in the vanguard of post-socialist transformation as they attract the majority of international investment and act as nodes for global flows of goods, capital, information and people." This thesis examines how legislation implemented nationally in post-socialist Kyrgyzstan was, and still is, 'domesticated' in everyday urban practices in Bishkek in order to emphasise how 'neoliberal' logics operate alongside socialist 'lock-ins' (Stenning et al., 2010; Hirt et al., 2013; Golubchikov et al., 2013). By examining the regulation of internal migration and the privatisation of housing, the thesis emphasises the plurality of legal spaces overlapping and unfolding in the city and how, through their liminality, such spaces fade in and out over time (Santos, 2002; Benda-Beckmann and Benda-Beckmann, 2014).

Within the framework of post-socialism, and especially in relation to urban informality in post-socialist cities (Smith and Stenning, 2006; Hirt and Stanilov, 2009; Bouzarovski et al., 2011; Tsenkova, 2012), this study explores the temporality of legal space in relation to the legalisation process of a 'squatter' settlement on the outskirts of Bishkek. The legalisation process is framed within the historical trajectory of post-socialist transition and, particularly, the initiation of state-controlled informal developments on the edge of the city, as well as the more recent political transition that follows the 2005 'Tulip Revolution' in Bishkek (Marat, 2006; Reeves, 2014). Examining the legalisation process over time highlights the performative, dynamic and negotiable character of the law and demonstrates the agency that individuals and non-human actants possess in relation to legal practices (Latour, 2010; Martin et al., 2010; Blomley, 2013a).

1.4 Contribution to legal geography and policy outlook

The overall argument of this thesis is that it is crucial to acknowledge and examine the temporal and processual aspects of legal space. This temporality is heightened in the context of the post-socialist city through its embeddedness within historical shifts from socialism to post-socialism and the accompanying enactment of legislation as means of pursuing a neoliberal agenda. Moreover, temporality is also markedly important within more 'localised' time periods such as the legalisation process of a

'squatter' settlement on the outskirts of Bishkek and how this indefinite time period overlaps, re-inforces, and at times, contradicts, the post-socialist transition. These 'localised' explorations of legal space draw on the wider transition from socialism to post-socialism but also enable the development of a nuanced understanding of labels such as 'legal' and 'illegal' (c.f. Cooper, 1996; Heyman and Smart, 1999; Heyman, 2013; Thomas and Galemba, 2013). A temporal appreciation of legal space is important for two key reasons. First, it enables an understanding of how legal spaces 'fade in' and 'fade out' (Benda-Beckmann and Benda-Beckmann, 2014) beyond official enactments of legislation, and often contradict each other. Second, it makes it possible to develop a finer-grained analysis of legal space, exposing how different agents and actants, material and non-material, play a role in law making (Braverman, 2009; Latour, 2010) and how the production of legal space is embedded in articulations of power that marginalise certain urban groups in the city.

From a policy perspective, this thesis responds to and questions the 'fiction' of law, developed in liberal thought, as a universalising and value-free institution. This 'fiction' has been used to formulate interventions that position the enactment of legislation as a panacea to urban problems (Fernandes and Varley, 1998). This approach reinforces positivist and formalist ideas of the law rather than acknowledging legal practices as socially constituted (Delaney, 2014) and thus how law works in practice. In Bishkek, the implementation of a 'new' piece of legislation in order to resolve urban problems implied, for some groups, progress, change and, most importantly, justice. This thesis emphasises that these enactments are meaningless without examining their enactment within wider historical, societal, economic, and political frameworks and without developing an understanding of how these enactments are reproduced in everyday contexts. The policy brief that forms a part of this thesis therefore makes policy reccomendations on the basis that legal enactments alone cannot resolve issues linked to internal migration in Bishkek. Instead, legal enactments need to be considered alongside broader contextual factors evident in Bishkek, such as societal attitudes towards migrants and shifting meanings of 'property'.

Scientific Papers and Policy Brief

This is a cumulative thesis consisting of this Frame, four scientific papers and a policy brief. The scientific papers and policy brief were published or submitted at different stages of the Ph.D process. A summary is given in table one below. Within the text of this Frame, each scientific paper is indicated by the 'Number' given in the table.

Number	Status	Paper Title
Paper I	*2015 (with Thieme, S.)*	'Institutional Transition: internal migration, the *propiska*, and post-socialist urban change in Bishkek, Kyrgyzstan'. Accepted: *Urban Studies.* Individual contribution: 80% (including data collection, data analysis, writing).
Paper II	*2015 (in print)*	'Globalising homeownership: post-socialist property rights in Bishkek, Kyrgyzstan'. Accepted*: International Development Planning Review*.
Paper III	*2015 (published)*	'Illegal geographies of the state: the legalisation of a squatter settlement in Bishkek, Kyrgyzstan'. *International Journal on Law in the Built Environment*, 7(1), pp. 39-54.
Paper IV	*2014 (submitted)*	Assembling legality: the material politics of a squatter settlement on the urban periphery. Submitted to: *Environment and Planning D.*
Policy Brief	*2013 (published, with Balybaeva, A.)*	Simplifying the *propiska*: Realising the benefits of internal migration. Research Evidence for Policy, *National Centre for Competence in Research North-South*, Bern, for the Swiss Agency for Development and Corporation (SDC), Regional Edition Central Asia, No.8, Kyrgyzstan. Available in Russian and English. Individual contribution: 85% (including data collection, data analysis, writing).

Table 1: List of Scientific Papers and Policy Brief that form Part II.

1.5 Research questions and theoretical rationale

Building on the earlier discussion in section 1, this thesis is concerned with exploring the enmeshed and overlapping relationship between law and urban spaces of the post-socialist city. The thesis illustrates how laws and legal practices are perceived and negotiated by different actors together with how these laws and legal practices produce, and are produced by, urban space. The central question of this research therefore examines how legal space is produced and how these productions vary over time law in the post-socialist city of Bishkek. The question is useful not only for shedding light on the relation between law and space in Bishkek but also for critically evaluating existing concepts in legal geography by expanding the geographical scope of its study (Braverman et al., 2014). Four sub-questions are used to explore the interface of law and space in Bishkek. Each individual sub-question forms the main research question for one of the four Scientific Papers which collectively form Part II of this thesis, as indicated below. Papers I and II both consider the regulation of internal migration and how this relates to property relations in the post-socialist city. Papers III and IV examine the legalisation process of a 'squatter' settlement on the edge of the city focussing on the agency of the 'state' and 'non-state' actors and material components respectively.

1. *How are institutional transformations in relation to internal migration constituted by changes in legislation and how is this transformation perceived, negotiated and 'domesticated' by different actors in post-socialist Bishkek? (**Paper I**)*

2. *How does the law use boundaries to categorise and demarcate space in relation to property rights? How are these laws enacted and implemented in the city of Bishkek and what is the effect of these enactments for different social groups? (**Paper II**)*

3. *How is law 'made' in the process of legalising an 'illegal' settlement in Bishkek and how are claims over legal authority negotiated, contested and 'domesticated' between the different state and non-state actors involved in this process? (**Paper III**)*

4. *How is legality assembled between material and non-material components in the process of legalising an 'illegal' settlement and how is agency distributed among these components? (**Paper IV**)*

Outline of the thesis

This thesis is formed of a Frame and a compilation of publications (four scientific papers and a policy brief), as outlined above. The Frame, which forms Part I, includes the Analytical Framework, Methodology and Methods, Research Context, Findings and Paper Synthesis, and Conclusion. The Analytical Framework introduces key debates and terms in legal geography before pulling on other disciplines to expand and push these debates further. The Methodology and Methods section outlines the combined epistemological standpoint of this study by drawing on methodological differences between doctrinal legal studies and social science. In introducing Bishkek, the case study on law, legal processes and post-socialist urban transformation is placed within its institutional and historical context. The section on Findings draws together the results of the data collection exercise and responds to the Research Questions. The Findings section also responds to the overall research question of this thesis by emphasising the importance of temporality in productions of legal space in post-socialist Kyrgyzstan. A temporal modality is assigned to each scientific paper to draw a link between the empirical data and this overall finding. These temporal modalities include mutation, entrenchment, process, and assemblage and are designed to collectively counter static interpretations of law and space. Part II includes four scientific papers focusing on institutional, and within this, regulatory changes, in post-socialist Bishkek and processes and assemblages of il/legality on the outskirts of the city. Lastly, Part II includes a policy brief that makes recommendations on the empirical findings in relation to the regulation of internal migration and its link with property rights of internal migrants.

2. Analytical framework:
Law, space and the post-socialist city

> "[L]egal geography is a lively and creative line of scholarship. But it could be livelier, and even more creative. Its full potential … has yet to be fully realized"
>
> (Braverman et al., 2014, introduction)

In understanding the productions of legal space in the post-socialist city, this thesis theoretically draws on studies in legal geography, urban theory, legal anthropology, and post-socialist studies. The first section of this Analytical Framework introduces two modes of analysis that have traditionally structured knowledge production in legal geography. A more recent call to investigate law and space through an 'interdisciplinary' or 'post-disciplinary' lens is then discussed as a counterpoint to this dual mode of analysis (Delaney, 2010; Braverman et al., 2014). The next section examines existing literature on law and the city. This section aims to understand why law is often buried within political and economic questions in urban theory and, reciprocally, why the city is largely ignored in legal studies (Imrie and Thomas, 1997; Fernandes and Varley, 1998; Philippopoulos-Maihalopoulos, 2007; Valverde, 2012). The final section forms a frame for examining processes of law and space unfolding in post-socialist Bishkek. Knowledge production in legal geography largely draws on urban contexts in the global North (Braverman et al, 2014). By drawing on literature in urban theory, legal anthropology and post-socialist studies, this frame serves as an analytical tool for exploring productions of law and space beyond the global North and, specifically, in the city of Bishkek.

2.1 Legal geography: current progress and conceptual problems

> *"The notion of space provides an important lens through which to view law … it provides both a grounded, physical setting, as well as more intangible universe, in which to locate the varying ways in which social relationships are created and regulated with differing effects."*
>
> (Benda-Beckmann et al., 2009a, 3)

In this section, studies examining the interface between law and geography are introduced. Two key approaches are outlined that emphasise the 'co-constitutive' approach of investigating law and space (Bennett and Layard, forthcoming). First, studies that aim to 'spatialise' law are discussed. These studies draw on the discursive references to space within legal discourse by examining official legal documents – Acts of Parliament, legal judgments, bylaws, decrees – through a spatial lens (Benda-Beckmann et al., 2009a; Delaney, 2003). The key aim of these studies is to highlight how law as an institution is socially – and, in particular, spatially – constituted in order to dislodge normalising and hegemonic principles that purport its universality and closure from social and political phenomena (Blomley, 1994; Levi and Valverde, 2008). Second, studies that aim to 'legalise' space are introduced. These studies aim to highlight how "situated legal practices … contribute to the spatialities of social life" and thus, how productions of space represent 'material' manifestations of the law (Delaney, 2003, 68).

Such a separation between these two approaches is, of course, artificial and some studies straddle this distinction particularly as the "spatial-legal might be so tight as to be seen identical" (Delaney et al., 2001, *xix*). Nonetheless, the two approaches serve as a useful introduction to legal geography and the key theoretical themes that have developed over the last twenty years.[7] The next section, however, highlights the 'impasse' of this development and its affect on the production of legal-geographic knowledge (Delaney, 2010). More recent studies are introduced which attempt to overcome this 'impasse'.

Spatialising law[8]

To examine the interactions between law and space, some scholars have examined law and legal practices through a spatial lens to destabilise its positivist, universalising and, especially, aspatial principles. These positivist understandings of law draw on traditions in Western liberal thinking whereby legal knowledge is imagined as disembodied and thus, diverse local knowledges are treated with suspicion (Blomley, 1994). In this Western tradition, law, ostensibly, is applied universally: everyone is equal before the law. In maintaining this universality and equality, there is a tendency of the law to "erase spatial specificity and local difference in the name of an ordered and apparent coherent unity" (Blomley, 2003, 25). This led

[7] Blomley's (1994) book, *Law, Space and Geographies of Power,* is often referenced as a seminal starting-point for legal geography (c.f. Benda-Beckmann and Benda-Beckmann, 2009a).

[8] In the legal geography literature, the terminology of these approaches vary, although the substantive aspects are the same. Blomley (2003) uses 'spatializing law' and 'legalizing space' which I have chosen to follow here, others such as Delaney (2003) uses law-in-space and space-in-law, while Holder and Harrison (2003) opt for 'doing law-in-geography' and 'doing geography-in-law.'

Canadian lawyer Pue (1990, 568) to describe law as distinctly 'anti-geographical'. Thus, in debunking these universal, value-free, and unified principles, legal geography aims to demonstrate how law is differentially experienced across space and how this discreetly benefits some groups while marginalising others (Blomley, 2003; Levi and Valverde, 2008; Blandy and Sibley, 2010; see Paper II).

By unpacking these positivist principles, legal geography merges with socio-legal approaches that identify law's social character and its role in ordering society (c.f Hart, 2007[1961]). With its emphasis on "uncovering a universal foundation of law based on reason" (Wacks, 2012, 281) the earlier movement of Critical Legal Studies (CLS) aligns particularly closely to the more contemporary project of legal geography (Blomley and Bakan, 1992). CLS aims to destabilise law's fiction of rationality by highlighting the uncertain, ambiguous and unstable character of law and addresses its contextual nature by highlighting how it reflects political and economic power (Unger, 1977).[9] 'Law' in liberal discourse "not only binds itself, through practices of legal closure, but also polices the spheres of politics and the economy while mediating their relation" (Barkan, 2011, 603). Law therefore "constitutes and reconstitutes *itself* as an autonomous 'domain' through its constitutive operations on *other* domains such as 'the political', the market, 'the private' as other-than and beyond the law" (Delaney, 2014, 3, author's emphasis).

Hegemonic and normalised orderings of the law are masked by its perceived closure and infallibility (Blomley, 1994). While socio-legal studies and legal geography emphasise law as socially (and spatially) constituted (Delaney, 2014), liberal discourse, on the other hand, through the 'practicing' and 'preaching' of the 'art of separation', constructs a barrier demarcating the 'inside' and 'outside' of the law (Walzer, 1984). Law therefore gains its authority through its perception as being tangible, divisible and accordingly, 'separate' from, and 'above', society (Levi and Valverde, 2008; Campbell, 2013).[10] This separation is bolstered by law's development as a 'formalised' and 'expert-driven' system of knowledge that marginalises alternative gazes (c.f. Foucault, 2009[1973]; Scott, 1998; Valverde, 2011).[11]

[9] Critical Legal Studies (CLS) emerged in the late 1970s when a group of legal scholars largely based in North America came together and shared "an abiding distrust of institutional authority (born out of the Vietnam War); a rejection of orthodox forms of legal scholarship (which were viewed as intellectually sterile); and a certain countercultural sensibility (reflecting the values of the 1960s)" (Schlag, 2009, 295). This led the CLS movement to take on the slogan 'law is politics.' Following a 'chilling effect' in the late 1980s, whereby applicants associated with the CLS movement were denied teaching posts within universities in the United States (and especially, Harvard), scholars began to avoid any association with it (Schlag, 2009). Legal geography, emerging in the early 1990s, was part of a larger movement of 'Law and ...' research, which was spearheaded by the 'Law and Economics' movement (Posner, 1987).

[10] See, for example, Ferguson and Gupta (2002) for a similar argument theorising the 'state.'

[11] Weber (1954) highlights that the development of the legal profession and legal education, among other factors, led to the development of law as a source of authority in Western societies.

Legal geography therefore focuses on deconstructing the discursive and rhetorical qualities of liberal notions of law by destabilising perceptions of legal closure and universality. This spatial exposure of the law reveals how "liberal legal discourse is an embarrassingly rich source of spatial tropes and metaphors" (Delaney, 2003, 69). Law's reliance on these spatial tropes opens up the potential of producing uneven spatialities and the subsequent marginalisation of certain groups. Thus, Blomley (2003, 25) highlights that "the Western legal project is underwritten by an organised forgetting of such spaces given that spatial diversity may affect core principles of the law, such as the rule of law and legal rationality." Legal geography therefore aims to foreground spatial aspects of the law in order disrupt its core liberal principles and highlight its role within the deployment of power (Blomley, 1994).

Legalising space

Examining how law defines social meanings of space highlights the importance of bringing a legal analysis to geography. As demonstrated above, the fecundity of spatial tropes in liberal legal discourse, despite law's rhetoric of universality, closure and detachment to society, is important for exploring the difference that geography makes to law and uncovering the latter's unevenness and role in productions of marginality (Blomley, 2003). Developing an understanding of space through a legal lens, on the other hand, highlights law as an expression of power and aims to understand how these contingent and relational expressions interplay with productions of space (c.f. Foucault, 1980b; Allen, 2003; Braverman et al., 2014).

In illustrating the importance of thinking of the spatial in terms of the legal, Blandy and Sibley (2010) draw on law's creation and maintenance of boundaries: a distinct geographical marker and delineator of power which exclude 'othered' groups through the assumption that the boundary is either neutral or pre-political (Ford, 1999).[12] It is the spatial-legal boundary production process that makes "regulatory spaces appear as naturally distinct" from other spaces (Valverde 1996, 368 in Blandy and Sibley, 2010). As Delaney et al. (2001, *xviii*, their emphasis) note:

> "Boundaries *mean.* They signify, they differentiate, they unify the insides of the spaces that they mark. What they mean refers to

[12] In Ford's (1999) essay, *Law's Territory (A History of Jurisdiction),* he argues how boundary-making and the formation of territorial jurisdictions – "the rigidly mapped territories within which formally defined legal powers are exercised by formally organised governmental institutions" – produces political and social identities that not only separates territory but also different types of people: "native from foreign ... slave from free" (p. 844).

> constellations of social relations of power. And the form that this meaning often takes – the meaning that social actors confer on lines and spaces – is *legal* meaning."

Studies examining the law-space nexus have, for example, been prominent in investigating the boundary between 'public' and 'private' evident in legal and geographical discourse. Blomley (2010) notes how this boundary serves as a fluid regulatory mechanism, which governs the behaviour of the (urban) public poor through potentially repressive legal measures (Blomley 2011).[13] Such legal measures tend to marginalise certain groups in the city such as the homeless, beggars or street-vendors, yet are often masked by language that pertains to the 'common good' (Benda-Beckmann et al., 2009a), as evident in the 'Safe Street' law that Blomley (2010) discusses. The 'common good' seemingly has a universal application while discreetly it removes 'others' from space, by what Mitchell (1997) refers to as the 'annihilation of space by law'.

Legal geography analyses law as an expression of power in relation to productions of space by challenging the perceived neutrality and value-free notions of Western liberal legal discourse. Public space, for example, is highlighted as being increasingly regulated through the logics of corporate and neoliberal doctrine (Mitchell, 2003; Layard, 2010). Similarly, in taking a legal-geographic lens to colonialism, Blomley (2008) reveals how the law served as a powerful and violent instrument of colonial dispossession (c.f. Comaroff, 2001). In such contexts, unpacking law as a neutral medium through which colonialism was produced and, instead, demonstrating its constitutive nature, highlights how a dominant way of 'seeing' and categorising space developed (Cosgrove, 1984; Scott, 1998; Valverde, 2012). Notably, seeing property and land through a lens of territoriality marginalised other 'pre-Colonial' land relations that were not reliant on its spatial division or Western notions of 'ownership' (c.f. Singer, 2000; Schmitt, 2003 [1950]; Blomley, 2008; Egan, 2013).

Blomley (2013a) draws on the marginalisation of other ways of 'seeing' property by analysing current treaty-making practices in Canada between the Crown and indigenous communities. In doing so, he argues how indigenous property rights have been 'framed' (drawing on Callon, 1998) by the Crown's need for economic 'certainty'. This certainty is established by territorially fixing property rights to an allocated space. The framing of property rights by the Crown, however, deviates from indigenous understandings of property, which are not necessarily territorially defined,

[13] Blomley (2011) uses the term 'public poor' in the city to refer to individuals who appropriate the public space of the city for a personal or economic means. This can vary from the homeless person looking for a place to sleep or a panhandler wishing to sell something from a pavement setting.

but rather function on sharing resources of the land (Blomley, 2004). Paper II of this thesis develops this historical account of 'seeing' property (see also Kedar 2014; Zips and Zips-Mairitsch, 2007). The Paper draws on the context of post-socialism to highlight how, following the collapse of the Soviet Union, a particular mode of 'seeing' property, framed by neoliberal logics of privatisation (c.f. Marcuse 1996; Stenning et al., 2010), was implemented in Kyrgyzstan.

Dissolving the dichotomy: a post-disciplinary approach?

Despite the potential for examining the slippages and fragmentary nature of legal space, certain theoretical hurdles remain. As Blomley (2003) argues, legal geographers need to move beyond the law/space binary discussed above. This binary is reinforced, however, by geographers continuing to police the disciplinary boundary between the legal and the spatial, whereby analyses of law are often buried within political questions rather than examined individually (Forest, 2000; Valverde, 2012). Meanwhile, for Philippopoulos-Mihalopoulos (2010, 6) the 'spatial turn' in legal studies is, at times, guilty of no more than an "add space and stir" approach thus, reducing space to yet "'another' social factor". Attempts of conducting research at the intersection of law and geography often, therefore, result in reverting back to the theoretical debates in the scholar's home discipline rather than forming an engaged, interdisciplinary mode of discussion. Delaney (2010) notes how this creates an 'archipelagic feel' to the wider theorisations of legal space.

In order to bridge this archipelago and create an 'interdisciplinary project', legal geographers have incorporated third-discipline interests such as anthropology and non-human legalities, and, in the case of this thesis, post-socialist studies and urban theory, into studies on law and space (Benda-Beckmann et al., 2009c; Braverman, 2009; Delaney, 2010; Braverman et al., 2014; see section 2.3). Moreover, several scholars have become engaged in finding a common language that recognises the distinctly entangled qualities of legal and spatial processes (Blomley, 2003; Philippopoulos-Mihalopoulos, 2007; Delaney, 2010). By running law and space together, Blomley (2003) coined the term 'splice' as a way of acknowledging the mutual dependencies and hegemonic meanings of the legal and the spatial. Thus, the 'splice' highlights what legal identities mean to space such as what the 'citizen' is to the 'jurisdiction', or the 'tenant' to the 'property'. Blomley (2003) uses the large number of disappearances and murders of female sex workers in a Vancouver neighbourhood as a means of exemplifying how 'splices' maintain dominant discursive understandings of

law and space. He highlights how the lack of public and official concern for the victims was a result of their identity as legal and spatial 'outlaws.' This identity was established through their involvement in the sex trade and by working and living in a peripheral location of the city associated with crime and poverty. As Blomley (2003, 31) notes, the sex workers employment at the 'margins' of the law and their presence working and living in a peripheral urban location "perhaps make it possible to treat their disappearance and likely murder differently". Butler (2007) also uses the Australian example of asylum seekers and the manufacture of public and legal hostility towards them through representations of their entry to the country as 'illegal.' This splicing simultaneously renders them spatial and legal outlaws in citizenship terms. Paper III also uses the concept of the 'splice' in relation to an illegal settlement on the outskirts of Bishkek.

The splice is especially useful in critiquing the assumed pre-given or *a priori* qualities of the spatial and the legal and their tendency to exude fixity, closure and neutrality (c.f. Massey, 1994; 2005; Blomley, 2003). By examining the everyday 'doings' and performative enactments of law and space (Butler, 1990) that produce the 'splice' – what Blomley refers to as 'splicing' – it is possible to draw attention to their fragmented and fluid nature. Therefore, rather than being reified and fixed, law and space are potentially open to slippages and creative re-workings or 're-splicing': thus "the spaces within which law is put to work, while disciplinary, are also potentially transgressive" (Blomley, 2003, 32). In re-splicing dominant notions of law and space, Blomley (2003) notes, in his example of Vancouver sex workers, how local activists and the missing women's family and friends began to reframe the women as citizens, destabilising their identity as sex workers, and promoted the community spirit of the local area, thus drawing attention away from its criminal reputation.

In expanding on Blomley's 'splice', Delaney (2004, 2010) uses the neologism of the 'nomosphere' to 'twist' the split and 'loosen' the binary of law and geography. In doing so, Delaney (2010, 25) draws attention to the "cultural-material environs of the legal and the legal signification of the socio-spatial, and the practical, performative engagements through such constitutive moments happen and unfold." As Delaney (2004, 852) emphasises, the 'nomosphere' is useful for exploring the "complex, shifting, and always interpretable blendings of words and worlds." Therefore, Delaney (2010, 15) notes that "while it is relatively easy to align the spatial with the material" it is also necessary to emphasise how the spatial is no less discursive or imagined than the legal. In addition, "the socio-legal cannot be confined to the domain of meaning or dematerialized discourse", instead Delaney (2010, 19) argues that "the legal must also be treated as consisting of and implicating the dynamic, reciprocal intertwinements of

social imaginaries, with performative and material aspects of sociality." Therefore, Delaney (2004; 2010) aims to break the impasse of legal geography by twisting common conceptualisations of law and space thereby merging their traditional systematic separation into the discursive (law) and the material (space). Paper IV contributes to this 'twisting' of the two by examining the materiality of law.

2.2 Law and the city: the meeting of epistemological difference

"In legal theory, cities … exist only because they serve as useful agencies of state power"

(Hartog, 1983, 2)

"The city is everywhere and in everything"

(Amin and Thrift, 2002, 1)

Grouped with studies on law and space, this section outlines existing literature on law and the city. Critical urban theory and research addressing the city as a legal concept, largely rooted in legal studies, are brought together to offer an explanation as to why law remains neglected from critical urban theory and why the city is rarely considered in legal studies. It is emphasised that opposing definitions of the 'city' wedge a divide between the two disciplines. Examining how a certain representation of the city and the 'local' are increasingly becoming - often implicitly - incorporated into international law aims to show how discussions in these disciplines can, and are, being brought closer together.

Critical urban theory and legal studies collide

As Philippopoulos-Mihalopoulos (2007, 5) writes, the relation between law and the city is a "blind spot that has so far escaped observation". Philippopoulos-Mihalopoulos (2007, 9) continues with:

> "One would dare say that the city operates as law's 'megaphone'. In the city, law's presence is magnified to a deafening extent – so much so that one no longer feels its presence: planning restrictions, environmental regulations, zoning, social control, borders between private, public and restricted access areas, pavements, roads, traffic

> lights, metro barriers, flows of people, headscarves at schools, hoods in shopping malls, power architecture and landscaping, are just a few of the urban legal moments."

Yet few studies examining urban change address how "legal institutions, legislation and juridical decisions affect the social production of urban space" (Fernandes and Varley, 1998, 3; c.f. McAuslan, 1998; Valverde, 2012). Instead, law "has tended to be taken as 'given', as an underpinning of socio-institutional actions rather than being conceptualised as constitutive of them" (Imrie and Thomas, 1997, 1401). "The centrality of law as one of the core facets involved in the restructuring of the urban environment" is therefore little addressed (ibid.). As Valverde (2012, 7) notes, critical urban scholars often bury law within other economic, political and social relations sharing Marxism's narrow view that sees "law as mere 'superstructure' that does not need to be closely analysed because it is a reflection of and explained by class interests."

This neglect of the law in relation to cities is partly explained by epistemological divisions that structure critical urban theory and legal discourse. These divisions are manifest in the different interpretations of the 'city'. Recent studies in critical urban theory advocate, for example, that the processes of (capitalist) urbanisation are becoming increasingly 'planetary' (Brenner and Schmid, 2011). Planetary urbanism, in echoing Lefebvre (2003 [1970]), emphasises that the processes of urbanisation are no longer confined to settlement-based and territorial-bounded understandings of the 'city'. Rather, urban processes, such as transnational capital investment, which also equate to new vectors of social struggle, are now operating beyond the city and instead at a 'planetary' scale (Brenner, 2013). This scalar re-definition 'perforates' traditional territorial divides such as the urban/rural (Amin and Thrift, 2002, 1).[14] The 'urban' therefore reflects a worldwide condition that moves beyond the traditional sense of the city to cover a whole society (Marcuse, 2009; Gandy, 2012). In addressing the social struggles of urbanisation, the 'right to the city' movement, calls for a re-appropriation of the 'city' from these neoliberal logics (Lefebvre, 2003[1970]; Harvey, 2008). This call, rather than applying only to the city, or cities, is, therefore, "increasingly seen as a means to transform the broader political and economic structure and spatial formation of twenty-first century world capitalism as a whole" (Brenner, 2013, 89).

While the 'city' is taking on an encompassing, 'planetary' meaning in critical urban theory (Brenner and Schmid, 2011), legal discourse remains rooted

[14] Brenner and Schmid use 'planetary' rather than 'global' in contrast to Sassen's (2005) 'global city' as the latter presupposes territorial boundedness of urban units (see Brenner, 2013).

to territorial boundedness. Therefore, in legal discourse, the city equates to a territorial jurisdiction. A territorial jurisdiction is what legal scholar Richard T. Ford (1999, 843) describes as a rigidly mapped territory "within which formally defined legal powers are exercised by formally organized governmental institutions … Territoriality is translated into jurisdiction." Ford (p. 852-53) goes onto note, by invoking spatial metaphors, how "the geographic boundaries of jurisdiction are a 'bright line' rule, never a flexible standard." It is the areal map – as a representation of abstract space - that is therefore essential for delineating jurisdiction. This abstraction, through the neutrality of the law, attempts to de-politicise such boundaries resulting in valourisation of some jurisdictional scales and the limitation of others. The neutral and impersonal production and performance of such boundaries, however, renders them unchallengable.

In comparison to the state, the city is a territorial jurisdiction with limited powers of governing in legal discourse. Cities remain 'creatures of the state' (Frug, 1980; Blank, 2006) "with no inherent rights or constitutional authority" (Hartog, 1983, 2). In discussing the development of American cities, for example, lawyer, Gerald Frug (1980) in his seminal piece, '*The City as a Legal Concept*', notes how the 'liberal attack' on the powerful medieval city in Europe led to the public/private division between the state, requiring legal restraint, and the individual or private corporation, requiring legal protection, as exercised in the name of liberty (Blomley, 1994). American law has therefore developed to become deeply biased against the emergence of powerful cities, yet less restrictive of corporate institutions (Frug, 1980). It is this powerlessness of cities that, as Frug (p. 1059) argues, prevents the realisation of 'public freedom', whereby individuals can participate in basic societal decisions that structure their lives. Power is instead devolved to corporations thus threatening the democratic potential of cities. Although some legal powers are devolved to the city-level, these are often considered to be, in comparison to state legal powers, inconsequential in nature regulating 'minor' issues such as parking fines, building regulations and zoning laws (Valverde, 2012). Moreover, unlike the ostensibly more unified territorial jurisdiction of the state (although, see Das and Poole, 2004, as a counter-argument), the city's territorial jurisdiction is regarded as fragmented as legal powers are often disaggregated among several municipal governing bodies as well as the legal powers of national and international jurisdictions (Campbell, 2013).

'Legalising' the city

This 'liberal attack' on the city as a legal personality perhaps highlights why the relation between law and the city often escapes observation in socio-

legal scholarship. More recently, legal scholars have emphasised different approaches in examining this relationship. Campbell (2013) argues that the city, instead, needs to be understood as a legal assemblage (McFarlane, 2011; c.f. Brenner, 2013; see also Paper IV). The assemblage of legislation and different legal jurisdictions represents the overlap of different normative legal orders that take effect in the city but are not jurisdictionally rooted to the legal powers of the city. Others, in advocating a spatial examination of the law, emphasise that legislation (at the state or international level) disproportionately affects cities (c.f. UN-Habitat, 2002; Valverde, 2012; Layard and Bennett, forthcoming). Laws on Compulsory Purchase Orders (CPOs), for example, while ostensibly aspatial, are typically invoked in urban areas as a result of large-scale regeneration projects (Imrie and Thomas, 1997; Hatcher, 2012). As explored in Part II, Kyrgyzstan's laws on internal migration (paper I) and privatisation (Paper II) mostly take effect in the city than in rural areas. This urban bias is evident by the movement of individuals within Kyrgyzstan being largely from rural areas to Bishkek and, therefore, the law's regulatory powers crystallize in the city rather than in rural areas. The legal enactments in relation to privatisation in the 1990s also largely affected the urban population where a greater proportion was living in state-owned, rather than private, housing at the time.

The city is also beginning to play an increasingly important role in international law. Frug and Barron (2006) link this increasingly important role to the emergence of international local government law which, they argue, emphasises cities' roles as simultaneously subordinate domestic governments and independent international actors. In international development, cities are thus seen as agents for state development (Goodfellow, 2012) through their economic role in national and global trade networks (Sassen, 2005). As UN-Habitat (2002, 5) notes, such international conventions "are not directly targeted to cities, but to states" although they "contain aspects of governance that are applicable within countries including cities, and therefore apply to good governance at the local level." In maintaining their vision of the 'inclusive city' based on principles of equity, civic engagement, transparency and accountability, UN-Habitat (2002) draw on international human rights legislation, such as the International Covenant on Civil and Political Rights (1966) and the Universal Declaration of Human Rights (1948), to bolster and strengthen this vision. In doing so, UN-Habitat draws on the universalizing and cosmopolitan principles of international human rights law and attaches them to the 'localised' spaces of the city. These universalizing principles framed within normative debates of 'good governance' often have the tendency, however, to position cities as globally uniform with similar ambitions and priorities, rather than accounting for their contextual

diversity and peculiarity (Robinson; 2006, also see section 2.3). Moreover, as Frug and Barron (2006) argue, these universalising principles evident in the emerging governance of international local government law promote a conception of the city as a 'private' space and thus as a mechanism for promoting private economic development. In subverting ostensible 'neutral' ambitions of the law, Frug and Barron (2006) critique the emergence of the body of international local government law as instead framing urban environments that are designed to serve the needs of capital accumulation (Harvey, 2012; Brenner and Theodore, 2002).

International legal engagement with cities involves an international organisation directly contracting with a local government body, such as a Municipal Authority or a Mayor's Office. In cooperation with UN-Habitat, the World Bank's programme on decentralisation is designed to "transfer … authority and responsibility for public functions from the central government to intermediate and local governments or quasi-independent government organisations and/or the private sector" (World Bank, 2001). Through the wider ideology of the World Bank and its focus on efficiency, small government, and the reduction of state subsidies, the decentralisation process 'empowers' urban governments by contracting with them through voluntary agreements (Blank, 2006). By entering into these voluntary agreements, local governments agree to make structural reforms in return for loans and financial assistance (ibid.). The World Bank is especially keen on targeting the decentralisation process of former socialist countries, such as Kyrgyzstan, which often inherited centralised notions of governance from the Soviet period (ibid.).

Although the 'city' is not directly expressed as a legal person in international law, how the 'city' is perceived and indirectly constructed draws us full circle back to critical urban theory and the pressing need to address the relation between law and the city (Philippopoulos-Mihalopoulos, 2007). As Blank (2006) notes, the 'decentralizing-localist' agenda of the World Bank serves as a vehicle for advancing neoliberal ideology through its emphasis on privatisation, efficiency, public-private partnerships, and economic soundness. Notwithstanding, this neoliberal ideology, paradoxically perhaps, also serves the World Bank's social principles of democratic participation and bottom-up initiatives (Blank, 2006). As Parnell and Robinson (2006, 339) note: "as many poorer countries are 'encouraged' by international financial institutions and donor governments to promote decentralisation and political devolution, the opportunity for local economic development initiatives has emerged." This 'decentralising' agenda, however, also constructs a hegemonic economic understanding of the city as local governments compete with each other in

attracting Foreign Direct Investment (Sassen, 2005; Harvey, 2012). As Blank (2006, 910) notes:

> "As with any formal legal change, it can lead to unexpected and sometimes undesirable results. Growing inequality among localities, exacerbated difficulties with cooperation, social fragmentation, and urban sprawl are such forms of decentralization and localist ideology"

In adding to this argument, Parnell and Robinson (2006, 339) argue that such strongly competitive agendas can provoke majority discontent and "serious legitimation crises" for local governments of poor and severely divided cities. Therefore, with the spatial juridification of the 'city' (and the 'local'), through the transfer of legal powers from the state, as initiated by the implementation of global legal frameworks and policy packages, comes the possibility of exclusion (Layard, 2012). Accordingly, while thinking through the 'local' empowers local communities, at the same time, it often assumes a unitary community that represents a static and fixed understanding of place which can be regressive and marginalise other claims over space (Layard, 2012).

The silence of the relation between law and the city in both urban research and legal studies reflects, in part, how, in the former at least, debates on the city have been subsumed within a critical Marxist tradition. Moreover, the technicalities of law and its framing as a dominant discourse hinder, to a certain extent, the ability of urbanists and social scientists more generally - without legal training - to form a valuable critique of how law works and is produced in the city. Above, I also attempted to show how a trend in critical urban studies to examine the urban as a wider encompassing process functioning beyond the 'city' (Brenner and Schmid 2011; Lefebvre, 2003), conflicts with the territorial, spatial and bounded thinking of law (Delaney et al. 2001) which continually reinforces an 'inside' and 'outside' unlike planetary urbanism which strives to highlight how there is 'no outside' in terms of urban processes. Nonetheless, a more critical approach to law, from a socio-legal studies tradition, has highlighted the malleable and constituted nature of law and its role in the production of urban space, together with how urban space produces law. Thus, Frug and Barron's (2006) conception of international local government law framing the city as a private, entrepreuneurial space, designed to accumulate capital, mergers with broader points of critical urban theory and the role of the city in capitalist development.

2.3 Law and the post-socialist city: a four-stage agenda

> *"Europe works as a silent referent in historical knowledge … Third-world historians feel a need to refer to works in European history; historians of Europe do not feel any need to reciprocate".*
>
> (Chakrabarty, 1992, 2)

Critics argue that knowledge production on the relation between law and the city is biased towards cities of the global North (Braverman et al., 2014). Cities such as Vancouver (Blomley, 2004; 2011), Toronto (Valverde (2012), and more recently, Bristol (Layard, 2010), play key roles in the knowledge production on law and urban space. This thesis takes the example of Bishkek to critically assess concepts formulated in the existing literature on legal geography and more specifically to explore links between law and the city from a geographical context beyond the global North.

This section begins by introducing the 'post-socialist' city. This is followed by four interconnected approaches for exploring the relation between law and space in post-socialist Bishkek. In combination, these approaches are designed to present a more 'global' and 'livelier' frame for exploring law and space by developing legal geography's inter-disciplinary objective. First, a call is made for the incorporation of global urbanism into legal geography as a means of emphasising the importance of exploring other case study cities beyond the global North (Robinson, 2011). Second, the concept of legal pluralism is developed to widen understandings of 'law' not only beyond non-state legal practices such as customary law, but by also examining the internal heterogeneity of state law making (Santos, 2002). Third, studies on post-socialism have developed the concept of 'domestication' to explain how urban policies, and specifically, neoliberalism, are reproduced within everyday practices of the post-socialist city (Creed, 1998; Smith and Rochovska, 2007; Stenning et al., 2010). The concept of 'domestication' is borrowed in this thesis as a means of understanding (re-)productions of everyday legal space in the post-socialist city. Fourth, the temporality of legal space and how legal spaces 'fade in' and 'fade out' is explored (Benda-Beckmann and Benda-Beckmann, 2014). The temporal, mobile, and fluid nature of legal space is particularly important for exploring post-socialist transition in relation to urban change in Bishkek.

The post-socialist city[15]

The end of state-socialism produced complex processes of urban change in East and Central Europe (ECE) and the Former Soviet Union (FSU). A neoliberal agenda of 'shock therapy' was introduced in many post-socialist contexts, such as Kyrgyzstan, to "quickly (re)institute private property regimes, remove barriers to multinational trade, eliminate state dominance over the economy, and dismantle existing social safety nets – all in order to jump start this particular form of capitalism" (Hirt et al., 2013, 8). The transition from socialist to post-socialist logics was typically perceived by international organisations (IMF, World Bank) as a binary and linear logic moving from 'there' to 'here' (Altvater, 1998). This approach, however, failed to recognise the continuity of institutional forms (see paper I) and attitudes (paper II) that reflect the path-dependent nature of change and the resulting formation of recombinant hybrids of both socialist and capitalist elements (Stark, 1996; Sykora and Bouzarovski, 2012; Golubchikov and Phelps, 2011).

The disjuncture between ideological versions of neoliberal change and their 'actually existing' version (Brenner and Theodore, 2002) are often respectively labelled as 'transition' and 'transformation' (Sykora and Bouzarovski, 2012; Hirt et al., 2013). As Ma (2002, 1546) writes, "'transition', as used in the literature on post-socialist development, assumes a process of change towards a perceived and fixed target." Transformation, on the other hand, provides an important counterpoint to the bird's eye view perspective of transition by acknowledging not only changes but "the weaving of socialist and post-socialist ideals and practices that highlight the vein of continuity often overlooked in other forms of transition studies" (Hörschelmann and Stenning, 2008, 343).

The urban is an important scale for observing these processes of urban change (Herrschel, 2007; Young and Kaczmarek, 2008). As Smith (1997, 357 in Stenning, 2004, 88) notes, it is often at the urban scale that "the nature of transition is actively contested and constructed." Within the context of Bishkek, transition from 'socialism' to 'post-socialism' is explored through a legal-spatial lens to reveal the 'domestication' of legislation (Stenning et al., 2010) as well as 'post-socialist' forms of legality (and illegality) and how these meanings are shaped over time. Four interconnected theoretical approaches for exploring these processes in Bishkek are given below.

[15] Theories of the post-socialist city are also discussed in greater depth in Paper I.

I. Global urbanism and the comparative gesture

In promoting the internationalisation of urban studies, global urbanism builds on understandings of cities across the world to inform wider debates (Roy, 2011; Robinson, 2011). A call is made here to draw on debates in urban theory and, specifically, the concept of comparative urbanism, in order to expand on legal geography's traditional bias towards cities of the global North.[16] Comparative urbanism aims to broaden the scope of urban theory by thinking across 'different urban experiences,' and especially beyond the ontological divide of the global North and South (Wacquant, 2008; Harris, 2008; McFarlane, 2010; Edensor and Jayne, 2011; Lees, 2011; Robinson, 2011; 2014;). As Robinson (2011, 2) notes: "the 'world of cities' has been analytically truncated, meaning that the experiences of many cities around the world have been ignored even as the broadest conclusions about contemporary urbanity are being drawn." By drawing on cities across the divide of the global North and South, comparative urbanism aims to establish a more global urban agenda. This global agenda feeds into theory building by stimulating new approaches to understanding key urban themes such as the post-socialist city (paper I), housing (paper II), and informality (papers III and IV).

Two theoretical narratives led to the neglect of cities beyond the global North in urban theory (Robinson, 2006). The first originates under the experience of the 'modern metropolis' developed from the urban sociologists of the Chicago School, which drew its influence from George Simmel (2010 [1903]) and his studies on metropolitan life. The Chicago School developed a repertoire of urban modernity focussing on aspects such as contemporary spaces of consumption, infrastructure and dwelling. These aspects of modernity developed into a new way of 'seeing' the city that became associated with 'progress' (Dennis, 2008; Gandy, 2008; Valverde, 2011). This created a theoretical distanciation from other cities that were framed as 'left-behind' and distinctly 'un-modern.' The second manoeuvre was the "more devastatingly divisive movement of developmentalism" (Robinson, 2011, 3). Cities of the global South became, and continue to be, framed within a discourse of 'underdevelopment' under the logics of poverty, environmental toxicity and disease, which serve as "grounds for numerous diagnostic and reformist interventions" (Roy, 2011, 224).

Comparative urbanism intervenes with this theoretical hindrance in urban theory by drawing on the notion that *all* cities are starting points and

[16] Similarly, Kedar (2014), in calling for a *comparative* legal geography, draws on studies in Comparative Law which draws on an understanding of similar legal concepts across different legal jurisdictions.

subjects for theory building (Roy, 2011). This is a particularly important intervention in an era where economic and social activities between different cities are connected through "spatially extensive flows … and intense networks of communication" (Robinson, 2011, 2). Urban policies are formed in one city and then dis-embedded and re-embedded in another through networks of international consultants (see McCann et al, 2013; Robinson, 2013). Comparative urbanism seeks to understand how these ideas become framed within imaginations of cities of the global South (Roy, 2011).

But what can comparative urbanism offer to legal geography? Comparative urbanism is particularly useful for emphasising the social context within which law is applied and how this context serves as a conditioning aspect of the particular form and content of the ensuing legal process. In practice, imported legal principles become modified and mutated in different contextual circumstances (Benda-Beckmann et al., 2009b). Moreover, comparative urbanism draws attention to 'legal-geographic' themes and approaches developed through empirical case studies of cities in the global North to test their applicability in cities of the global South. Legal-geographic studies examining the urban processes of gentrification and displacement in Vancouver (Blomley, 2004) or London (Hatcher, 2012) are also unfolding in cities beyond the global North, yet a legal understanding of how such dynamics unfold and how this 'universal' theorising relates to a different context remains under-theorised (c.f. Harris, 2008; Lees, 2011).

While certain 'legal' themes seem to fit with the city of the global North, studies on cities and law in relation to the global South are more likely to engage with certain topics, and especially 'illegality' (Roy, 2005; Van Gelder, 2010; Datta, 2012).[17] While "illegality is not exclusively associated with the poor" as Fernandes and Varley (1998, 5) note, "the social implications of illegality in low income areas are, above all, a matter of urgency". Illegality, however, has typically become associated with certain spatialities of the city, and the 'slum', in particular (Ghertner, 2010). This links to the tendency in urban theory more broadly to equate poverty with 'slums' while neglecting other spatialities (see Arabindoo, 2011; Gilbert, 2007; Robinson, 2008; Roy, 2011; c.f. UN-Habitat, 2003a). As Roy (2011, 225) argues, "the slum has become the most common itinerary through which the Third World city (i.e. the megacity) is recognized". Drawing on the case of Delhi, Ghertner (2008) highlights that a vast proportion of the city has 'illegal' beginnings, but those with the 'world-class' look fall outside the scope of such analyses. Moreover, other 'illegal' spatialities are often materially less visible and lie outside of 'political' urban discussions unlike

[17] Although Valverde's (2012) study on the confusing, obscure and overlapping body of municipal law in Toronto also raises potential for discussions on 'illegality' in cities of the global North.

the more tangible urban spaces of slums and mega-event developments. The largely unregulated legal relationship between landlords and tenants, for example, illustrates how tenant populations in cities of the global South also often live in vulnerable housing situations at the margins of 'legality' (Gilbert, 2008, Kumar, 2011; UN-Habitat, 2003b). As explored in paper II, a largely ignored and misunderstood body of law on tenancies means that landlords often evict tenants without due notice, 'inspect' the property without giving forewarning, or increase rental payments beyond 'reasonable' levels.

II. Legal pluralism and interlegality

In an effort to shed its intellectual vision based largely on the global North, legal geography has begun to incorporate perspectives on space through contributions from legal anthropology, and especially concerning notions of legal pluralism (Benda-Beckmann et al., 2009a: Benda-Beckmann and Benda-Beckmann, 2014). A focus on legal pluralism provides greater potential for destabilising the 'unitary myth' in relation to 'state-law.' This moves away from 'legal centralism' (Griffiths, 1986) by drawing attention "to the possibility that law of various kinds, with different foundations of legitimacy, validity, power, and authority, and with different degrees of institutionalisation and formalisation, can coexist within the same social space" (Benda-Beckmann and Benda-Beckmann, 2014, ch. 1; c.f. Delaney, 2003; Tamanaha, 2011; Van Gelder, 2012). As Benda-Beckmann et al. (2009a, 4) note:

> "Many people live under plural legal constellations … they negotiate one set of rules relating to personal law, such as customary law, with another such as religious or international human rights law … along with state law that also reflects a degree of heterogeneity."

Legal pluralism widens the definition of law beyond the 'state' and therefore provides a tool for examining multiple legal constructions of space and boundaries. Understanding the plurality of legal orders is especially important in contexts where presence and power of state legal institutions are 'weak' or may have limited reach, noticeably at the 'margins' of the state such as in rural areas and informal settlements of urban areas (Das and Poole, 2004; Tamanaha, 2011).

A focus on legal plural orders also advances questions of negotiation and liminality in relation to lived experiences of law and its disjuncture with official textual representations (Chouinard, 1994). Legal pluralism highlights how individuals exert agency over the law by, for example,

'forum-shopping', where individuals have choice over the selection of legal orders based on their perceived outcome of using one legal institution over another (Benda-Beckmann, 1981; Merry, 1992; Meinzen-Dick, 2009; Steimann, 2011: Locher et al., 2012). In her study on courts of elders (*aksakal* or 'old-beards') in Kyrgyzstan, Beyer (2007; 2014) emphasises the personal reasons why villagers in her region of study try to avoid official state courts and resolve their issue with the *aksakal* court that forms part of the administrative structure of the village (*aiyl ökmötü*). Beyer notes how a possible transfer of the case from the *aksakal* court to the state judiciary system can trigger shame-anxiety as individuals are potentially stigmatised by other village members. Financial worries also play a role in relation to the largely undefined costs payable in bringing a claim to the state legal system (Beyer, 2014).

As Fernandes and Varley (1998, 4) note, "although informal law is an important and neglected area of study, it must be viewed in relation to formal law and institutions". *Aksakal* courts represent the liminal boundary between 'state' and 'non-state' legal orders. Rather than viewing customary law as existing and evolving separately from state law, both are involved in a co-production of law that stretches across the state/non-state divide. In Kyrgyzstan, the state legal system has defined the jurisdiction of *aksakal* courts in terms of the matters they can review (Beyer, 2014). This jurisdiction relates to 'local' and 'place-bound' issues such as family and land disputes within the village. The state legal system also refers issues that it considers as 'local' to the *aksakal* courts, as the *aksakal* are considered to have a better awareness of the issues at hand (Beyer, 2014).

More recently, globalisation has come to be conceptualised within a legal pluralism framework. Questions have arisen in terms of whether globalisation has forced theories on legal pluralism into a new paradigm which examines legal authority not only between local customary law and the state law, but also international law (Santos, 2002; Randeria, 2008; Michaels, 2009; Twining 2010). As Merry (2008) notes, international law is produced just as much through informal rules and practices as those based on top-down treaties. Customary international law develops through a general and consistent practice of states, because of a sense of legal obligation (UN-Habitat, 2002). If, over a period of time, states continue to perform this obligation, the behaviour becomes recognised as a practice of international law and thus, binding on states (ibid.).

Santos (2002) offers a useful intervention to the logic of various scales of law and regulatory phenomena by using the metaphor of the map to chart the sites at which different legal modes and social power operate. In unpacking legal pluralism and its tendency to separate different legal orders,

Santos highlights how different "legal spaces are superimposed, interpenetrated and mixed in our minds and our actions" (Santos, 1995, 473). He defines this overlapping nature of multiple legal spaces operating at different legal scales and through different legal standpoints as *interlegality* (Santos, 1987; 1995). Interlegality challenges the "doctrinal closure of legal formalism and shows how 'state law' is at once connected to a range of alternative legalities and normative orders" (Butler, 2009, 5).

The concept of legal plurality not only emphasises legal orders beyond state law but also the internal plurality of state law itself. Examining this plurality within law making practices involves re-defining the state and its relationship with law (Santos, 2002). This re-definition challenges hegemonic notions of the state as a 'single agent' acting 'above' society in order to reveal a disaggregated concept of power between 'state' and 'non-state' individuals and institutions (Foucault, 1991; Ferguson and Gupta, 2002; Sharma and Gupta, 2006). This disaggregated notion of power demonstrates how the legal authority of the state is distributed among 'state' and 'non-state' agents (paper III) and also material and non-material 'actants' (Latour, 2010; see paper IV). Moreover, pluralising the state destabilises rigid binaries drawn between state/law/formality and non-state/illegality/informality (Roy, 2005; Rajagopal, 2008; Van Gelder, 2010) and, instead, offers a trajectory for examining the 'illegality' of the state and its involvement within the productions of 'illegal' space (this is explored further in paper III).

III. Post-socialist cities: 'domesticating' law

Studies on post-socialism have been especially prominent in understanding how high-level policies, often linked to the rapid introduction of neoliberalism, are reproduced, negotiated, and domesticated at the individual or household level (Stenning et al., 2010; Hirt et al., 2013). These localised understandings of post-socialism are used in the empirical section (Part II) to understand how law and legal concepts are reproduced through individual perceptions and agency over law making (Martin et al., 2010). A shift has therefore occurred from examining 'top-down' or 'out-there' theoretical constructs, especially in relation to the implementation of neoliberal policy, towards analysing post-socialism as 'actually existing' (Brenner and Theodore, 2002; Stenning and Hörschelmann, 2008; Hirt et al., 2013).[18] These studies contrast abstract, ideological versions of neoliberalism with the contextual and concrete embeddedness of such

[18] This is similar to Bahro's (1979) then politically controversial book, *The Alternative in Eastern Europe,* where he argues that 'actually existing socialism' in the former GDR was still based on a class-society.

political and economic projects "insofar as they have been produced within national, regional and local contexts defined by legacies on inherited institutional frameworks, policy regimes regulatory practices and political struggles" (Brenner and Theodore, 2002, 349).

Recent studies on neoliberalism within a post-socialist context have developed Creed's (1998) notion of 'domestication'. The 'domestication' of neoliberal ideologies draws attention to their social reproduction within the everyday sphere, thus formulating the 'actually existing' versions mentioned above. Domestication therefore is "translating big political-economic projects … into something that are not general and simply 'out there' and all-powerful … [but] always created through everyday practice … [and] made tolerable as best one can, through the lives of ordinary people" (Smith and Rochovska, 2007, 1165). Therefore, in taking an ethnographic approach, Creed (1998) explores the effect of agricultural collectivisation in a village in Bulgaria during the late 1980s. In doing so, he demonstrates how the villagers 'domesticated' state socialism in accordance with the needs of their own households and communities in order to make their own lives more tolerable. This was not necessarily through an act of resistance but rather through subtle, everyday negotiations of such policies. Moreover, the fine-grained approach to Creed's study highlights how post-1989 events break down the dichotomy between 'socialism' and 'post-socialism' and reveal how this shift in 'time' is instead a personal and negotiated process. In returning to the village following the overthrow of the Communist regime, Creed (1998, 277) highlights how the villagers attempt to embrace their domesticated version of socialism in defence against "would-be capitalist excesses." The villagers therefore used their domesticated version of socialism to, in turn, 'domesticate' capitalism (ibid.).

Stenning et al. (2010) have since developed the notion of 'domestication' to include a two-tier analysis of examining everyday social productions of neoliberalism. The first aims to examine domestication at the level at which "politicians, academics, think tanks and social institutions at the national, regional, and international scales have 'domesticated' the dissemination of neoliberal policies" (Stenning et al., 2010, 3). This form of domestication raises questions over debates which cast neoliberalism as a 'top-down', uniform political-economic project and thus points more towards spatially (and temporally) different versions of neoliberalism or *neoliberalisation* (c.f. Brenner et al., 2010). The second aims to move beyond 'national elites' and examine the "everyday economic practices of individuals, households and communities" (Stenning et al., 2010, 3). The latter joins Creed's ethnography by examining the mundane practices of 'domesticating' neoliberalism.

This two-tier concept of 'domestication' is used in this thesis to examine how legislative enactments in the post-socialist city – often linked to the pursuance of neoliberal aims (see Paper I and paper II) – are both negotiated and interpreted by those working within such institutional systems and those subject to such systems. 'Domestication' also serves as a useful concept for understanding how non-state individuals become involved in productions of law, such as the residents of the illegal settlements (Paper III and Paper IV). These two tiers inevitably converge depending on the personal relationships existing between those 'inside' and 'outside' each institutional system (Stenning et al., 2010).

IV. The transformational city: a 'timely legal geography'?[19]

Legal geography has recently become aware of its traditional privileging of space over time and its neglect towards the temporality of legal space (Valverde, 2014, Braverman et al. 2014).[20] This resonates with wider debates in social theory over the reifying of the epistemological boundary between time and space through claims calling for the 'end of temporality' (Jameson, 2003), as enthusiastically taken up in geography's 'spatial imperialism' (Crang and Thrift, 2000; see also May and Thrift, 2001; Soja, 2010).[21] This study therefore draws on an emerging critique in legal geography that destabilises a core part of its definition: space. This, of course, is not to disregard space altogether, but rather, in following, Massey (1994), highlights the limitation of this dualistic mode of thinking that separates time from space. In contrast, the two are understood to be deeply interwoven and inseparable (c.f. Schwanen and Kwan, 2012; Rogaly and Thieme, 2012).

As Braverman et al. (2014) argue, examining the interwoven notion of time and space calls for a careful understanding of the temporality of legal spaces. Legal spaces come and go regardless of legislative changes in official law. As Benda-Beckmann and Benda-Beckmann (2014, chapter 1) argue, "once legally abolished, spaces that are legally defined do not necessarily disappear, but linger on in practice and memory beyond formal expiry." Valverde (2012, 111) refers to these as "ghost jurisdictions", whereby the political abolition of certain entities or the repeal of law by legislative bodies, individuals and organisations continue to perform the old law in

[19] From Braverman et al. (2014).
[20] This contrasts with the development of social theory more generally and the neglect of space whereby: "[t]ime marches on but space is a kind of stasis, where nothing really happens" (Massey, 1992, 69; see also Soja, 1989; 2010).
[21] Indeed, as Massey (1992) notes, all this can only be a delight to someone who has long worked as a geographer.

everyday practice (c.f. Thelen, 2006; Maandi, 2009). This produces phases in which new spaces "fading in are typically characterized by the co-existence of the old legal order and an emerging new regulatory regime" (Benda-Beckmann and Benda-Beckmann, 2014, chapter 1). The resultant effect of incorporating temporality is the understanding that legal spaces are mobile and liminal. Fading in and out as a result of changes in official pieces of legislation, while simultaneously resembling an attachment to expired legal orders, produces a hybrid, multiple and overlapping understanding of legal space (Santos, 1987).

The mobility and temporal nature of legal space not only challenges fixed and static interpretations but also opens up debate on the different agents involved in its production (Latour, 2010; Martin et al., 2010; Benson, 2014). As Martin et al. (2010) note, there is a tendency in empirical studies in legal geography to focus on the outcomes of legal practices, such as spatial critiques of court judgments and legal instruments. This 'fixed' perspective of law tends to omit the negotiations, as well as everyday 'domestications' discussed above, in relation to law making and especially the power struggles at play between different actors (Braverman et al., 2014). Studies have therefore examined the role individual agents play in producing legal space (Martin et al., 2010). Benson (2014, chapter 9), for example, examines the 'privileged' position of judges "as actors holding an inordinate amount of power to construct and police spaces they occupy." Continuing with the importance of the role that individuals, and especially 'legal experts', play in the legal process, Martin et al. (2010, 188) examine a contentious dispute within a residential community and draw on how lawyers representing different interest groups create new spaces and spatial practices thus providing a "more fine-grained picture of the process of creating space through the making of law." Paper III also examines the role of various groups and individuals in the legalisation process of a 'squatter' settlement in Bishkek, and specifically the relationship between the residents of the settlement and the 'state'.

In studies on the agency of law making, scholars have also begun to place an emphasis on the 'non-human' by examining the role of material actants (Braverman, 2009; Delaney, 2010; Latour, 2010). As Delaney (2010, 20) notes:

> "The materiality of the legal (and the processes and effects of materialization) become discernible through analysis of the often contentious spatializations and performances through which it assumes a worldly presence, however provisional and revisable."

Studies in legal geography have drawn on Latour's (2010) ethnographic study on the French *Conseil d'Etat* and how the process of legal reasoning becomes intertwined with both material – the folders, paper clips, envelopes, meeting rooms - and non-material, or human, actants. The ethnographic study destabilises traditional Durkheimian separations between law and society and instead treats law as a network of people and of things which become involved in the decision-making processes of the *Counseil d'Etat* (Levi and Valverde, 2008). In answering wider calls for the rematerialisation of geography (Whatmore, 2006; c.f. Anderson and Wylie, 2009), other studies have examined the olive tree in the Occupied Palestinian Territory and how its identity and meaning has changed through a set of government policies, court decisions and military regulations (Braverman, 2009). Moreover, Philippopoulos-Mihalopoulos (forthcoming) highlights that there can be no justice that is not articulated through and in matter. Justice is therefore a spatial struggle of various human, natural, non-organic and technological bodies. Paper IV also examines the materiality of law in relation to the legalisation process of a 'squatter' settlement and, in particular, how the fluctuating combination between material and non-material actants produces an assemblage of il/legality (c.f. Farías and Bender, 2009; McFarlane 2011; Campbell, 2013).

Summary

This section has introduced existing debates in legal geography and contemporary studies that aim to push beyond academic divisions between law and the geography. This epistemological division also explains the neglect of critical research on law and cities as urban theory develops an understanding of the 'city' beyond territorial limits that studies in law rely on in order to understand juridical authority. In developing a framework for examining legal and spatial processes and their mutual dependencies in Bishkek, concepts borrowed from other disciplines were integrated together in order to 'globalise' legal geography. This framework is designed to provide a conceptual entry point for investigating law in a non-Western and post-socialist context. The next section (Section 3) pursues this further by merging epistemological perspectives in the law and the social sciences to form a 'mixed' research methodology for examining law and space in Bishkek. Section 4 introduces Bishkek and the specific empirical entry-points of regulating rural-urban migration and the development of informal settlements on the urban periphery. The analytical framework used to examine the relations between law and space in Bishkek outlined in section 2, led to interpreting the empirical findings through four temporalities of legal space discussed in section 5: mutuation, entrenchment, process, and assemblage. Part I is concluded in section 6.

3. Methodology and methods:
Merging epistemologies

> *"I am much indebted to geographers … Nevertheless, a juridical way of thinking is far different from geography. Jurists have not learned their science of matter and soil, reality and territoriality from geographers."*
>
> (Schmitt, 2003[1950], 37)

The methodology for this thesis develops a research design where geographers and lawyers can combine their techniques and training in responding to the practices and processes of law and space. In what follows, it is highlighted that "questions of methodology are central to the knowledges we produce" (Hörschelmann and Stenning, 2008, 340). Therefore, epistemological traditions in law and geography are unpacked and then brought together to form a partial account of law and space production in Bishkek. The structure of this section is as follows. First, the institutional context of this thesis is outlined. This is followed by an explanation of mixed-method research which framed the data collection exercise of this thesis. Subsequently the two types of research methods used are described. First, legal doctrine is explained as a form of 'methodology' that lawyers (both academic and professional) follow. It is also emphasised, however, that the very concept of 'method' is difficult to incorporate into a legal discussion (Vranken, 2012; Hutchinson and Duncan, 2012). This section also describes how legislation is analysed and, therefore, how the legal 'data' in this thesis was also analysed. Following this, the ethnographic methods employed in this thesis are then discussed in forming a deeper, although still partial, research narrative.

3.1 Institutional context

In total, seven months were spent in Bishkek, Kyrgyzstan carrying out legal and ethnographic research between 2011 and 2013 (see table 2). During the first visit, in January 2011, I explored issues surrounding the *propiska* and developed institutional partners for my next visit. This field visit was vital as I had never been to Kyrgyzstan before and therefore gave me the

chance to familiarise myself with the broader research context.[22] A research proposal was developed after this visit. During my second, more extensive, field trip I collected empirical data for papers I and III, and also the policy brief. In 2012, I returned for another two and half months and collected data for papers II, III, and IV. During my final visit in September 2013, I built on the existing data I had for papers III and IV.

Field Visit	**Data Collection Exercise**	**Written output**
January 2011	• Networking with local and international organisations in Bishkek, especially in relation to the regulation of internal migration. • Visiting illegal settlements with local NGO and interviewing residents.	Preliminary field visit for PhD Proposal,
April 2011 – July 2011	• Interviewing residents of illegal and informal settlements. • Interviewing politicians, lawyers, NGO workers and civil servants in relation to the regulation of internal migration. • Observation within passport offices. • Shadowing applicants through residence permit registration system.	Paper I, Paper III, Paper IV, Policy Brief
May 2012 – July 2012	• Interviewing tenants and housing managers. • Interviews with organisations and individuals responsible for settlement legalisation. • Interviews with residents of illegal and informal settlements.	Paper II, Paper III, Paper IV.
September 2013	• Interviews with individuals responsible for settlement legalisation. • Interviews with residents of one illegal settlement.	Paper III, Paper IV.

Table 2: Field visits with data collection exercises for each visit.

[22] I already had knowledge of Russian, however, from the extended period of time I had spent in Russia learning the language and teaching English.

This study was carried out at the Human Geography Division, University of Zurich, Switzerland. The National Centre of Competence in Research North-South (NCCR N-S) funded the research for this study. Within this institutional framework, I was part of a Thematic Node focusing on Institutions, Livelihoods, and Conflicts, specifically focussing on the research project, Migration, Knowledge and Development. NCCR N-S was a global network of scholars working across the global North and South, and included a local office in Bishkek, Kyrgyzstan.[23] During my research, I exchanged with scholars working in other contexts on similar themes of research as well as scholars both from, and working in, Kyrgyzstan.

During my field research in Kyrgyzstan, I not only benefitted from the assistance of the NCCR N-S office in Bishkek but also the Social Research Centre and Tian-Shan Policy Centre, based at the American University of Central Asia (AUCA). I was a visiting scholar at these institutions in 2011 and 2012 respectively. This provided a forum for discussion with other scholars working on Central Asia and assisted with developing contacts in Bishkek and recruiting research assistants.

3.2 Mixed-method research: epistemological collaboration

In her seminal and much-cited work, *Simians, Cyborgs and Women: The reinvention of Nature* (1991), Donna Haraway argues how the 'God's trick,' where the researcher represents a "single, final, detached and unblemished depiction of the world" (Barnes, 2001, 550) as a neutral observer, is not possible within scientific research. A researcher's knowledge is partial and this partiality as well as their location in time and space will influence how the world is viewed and interpreted (Mullins, 1999). Studies taking feminist and post-structuralist (Varley, 2002) approaches in geography advocate this epistemology to highlight how productions of geographical knowledge are always partial, situated and linked to the contexts in which it is created (Gibson-Graham, 1994; McDowell 1992; Rose, 1997; see Bartlett, 1990, for a legal perspective). Such an approach to knowledge formation in geography has therefore highlighted the 'plurality' of truths that make up the social as a means of denying an 'Archimedean' or privileged approach to research, whereby certain sorts of representations, expressions and processes become privileged and foundational, such as 'scientific' knowledge over lay knowledge (Rorty, 1980). Instead, knowledge claims of objectivity and naturalness are 'deconstructed' (Derrida, 1977) and

[23] The NCCR N-S Project ran from 2001 until 2013.

highlighted as representing power influence and positionality in the contradictory and multiple processes of knowledge formation.

In developing this approach of partial (geographical) knowledge formation, Nightingale (2003) highlights how a combination of different epistemological standpoints can form a collaboration of partial knowledges. This collaboration of partial knowledges can fit together to tell a wider (although still partial) research narrative. In her study on community forestry in Nepal, for example, Nightingale combines ethnographic techniques such as oral histories, participant observation and in-depth interviewing with aerial photography interpretation and a quantitative vegetation inventory. In particular, Nightingale uses aerial photo interpretation in a "non-positivist way by refusing to accept the maps generated as telling the 'real' story of forest change" (p.86) and therefore rejects the notion that photography represents reality, arguing instead, for another (partial) representation of reality. Although similar to triangulation "whereby the results from one method are compared in relation to another method to ensure the results are consistent or corroborate each other, thereby validating the data" (p.79; c.f. Backhaus, 2001), Nightingale's mixed-method technique is more concerned with comparing the inconsistencies and the silences and gaps between different methods. Different research methods are therefore brought together as a series of incoherent vignettes that piece together different parts of the research question under investigation.

Mixed method research seeks to breakdown traditional boundaries between epistemology and research method. In geography, Geographical Information System (GIS) science, for example, has come under scrutiny (and 'mapping' more generally) from human geographers (Smith, 2005). Critics argue that the sub-discipline has challenged efforts of the 'interpretative turn' in geography by reasserting the power of scientific positivism, and reframing the discipline as a "spatial science in the service of technocratic power" (Smith, 2005, 899). In particular, GIS has become discursively linked to positivist, quantitative methods of knowledge production. 'Feminist' approaches to GIS science, therefore, aim to uncouple the link between quantitative method and positivist ways of knowing (Elwood, 2010) aiming "not to accept GIS as truth but to understand how it works as a knowledge system" (Schuurman and Pratt, 2002, 298). This uncoupling of a research field with a particular epistemology and its associated research methods is linked to Derrida's deconstruction which Lacey (1998, 80) notes "proceeds on the assumption that we need to erode the power of the hierarchically ordered dichotomies".

The research methodology of this thesis borrows Nightingale's (2003) approach to mixed-method researching by drawing on epistemological traditions of legal studies and its doctrinal or 'internal' approach and combining this with geography, or more broadly the social-sciences, and its ethnographic engagement. In doing so, the thesis aims to highlight the partiality of each approach and to also combine these approaches to provide a broader, yet still partial, research narrative on the productions of legal space in the post-socialist city. This follows Valverde (2009, 153) who has written broadly on law and space through an 'urban' lens by emphasising a need within legal-geography not to turn away from 'high' law but to perform the difficult trick of being both "inside and outside law, simultaneously technical and theoretical, legal and socio-legal". This formed the basis of the methodology behind the thesis and is discussed below.

3.3 Legal method: doctrinal and non-doctrinal analysis

"[D]octrinalists are not used to making their implicit methods explicit in order to show outsiders how they proceed in their research"

(van Gestel and Misselwitz, 2014, 5-6)

Doctrinal analysis

The legal research methods employed in this thesis were partly located within the 'doctrinal', positivist mode of legal inquiry; a method used by both professional and academic lawyers. As Unger (1977) notes, law is a 'system', this system works as a doctrine whereby, if properly interpreted, it supplies the answer to all questions of social behaviour. Providing a step-by-step guide of the processes behind a doctrinal 'legal method' is, however, problematic. As Chynoweth (2006) notes in one of the few texts on legal method: "[t]here is a dearth of theoretical literature on the nature of legal scholarship and a consequent lack of awareness of what legal scholars actually do." I had previously spent two years studying law and a further two years training to become a lawyer at a law firm in the UK but during this time, I had no formal education in 'legal method'. This led me to reflect on my 'legal method' for this thesis: what is it that lawyers

are doing when they interpret the law? As van Gestel and Misselwitz (2014, 5) note:

> "The Justices of the Supreme Court cannot agree … on the straightforward matter of how one goes about deciding an important case because there is no legally required methodology but rather methodologies that can claim legitimacy in the legal system and from which a judge may pick and choose."

Law therefore lacks an anchor – a set of established principles and a legal methodology that determines rules and results (Kairys, 1998).

In studying the English legal system, a law student develops an understanding of key areas of law (commercial, property, equity and trusts, contract) and also the procedures behind passing a law through the parliamentary system and bringing a claim to the English courts. These procedural aspects demonstrate a 'methodology' inherent throughout the legal system to ensure what Baxter and Eyles (1998) would describe, in a social science context, as 'rigour.'[24] In legal practice, rigour equates to fairness and justice in the legal system and ensures all individuals are subject to the same procedures. Legal theorist, Hart (2007[1967]) describes the procedures of law as the secondary rules of a functioning legal system, which equate to the 'rules about rules'.[25] These standardised procedures incorporate 'objectivity' into the legal system. Nonetheless, the procedural aspects of law fail to explain the *reading* of the 'law' or, in other words, how a lawyer determines the content and scope of the law on a particular issue.

In reading the law, doctrinal analysts therefore ask the question: 'what is the law?' This responds to the objective nature of legal analysis and is established through finding answers from the 'doctrinal system' through reasoning (Hart, 2007[1967]). Therefore, lawyers "usually presume that the legal system contains one single right answer to each legal question" (Hesselink, 2009, 2), based on the notion that law on any subject is "pre-existing, predictable and available to anyone with a reasonable legal skill" (Kairys, 1998, 2). Although every lawyer is supposed to reach the same decision as each other as to 'what the law is' on a particular subject, the intricacies of this deductive process are always open to different interpretations, which requires a judiciary system with an elevated technical expertise (Goulder, 2013). As Kairys (ibid.) notes "the power

[24] This has come to mean the satisfaction of the conventional criteria of validity, reliability and objectivity within qualitative research (Baxter and Eyles, 1998).
[25] The primary rules, on the other hand, proscribe the "free use of violence, theft and deception to which human beings are tempted but which they must in general repress if they are to coexist in society with each other" (Hart, 2007[1967], 89).

and legitimacy of this higher source rests on its claim to grounding in a sophisticated process that works by logic and reason and is separate from and independent to politics" (as discussed in section 2.1).

Legal academics working in the field of European law have recently been pushing an agenda for emphasising the tenets of legal (doctrinal) method (van Gestel and Micklitz, 2014; Edwardsson and Wockelberg, 2013; Hesselink, 2009). They note how legal analysis in European law requires discussion within the academy, and in practice, to form a dialogue as to how lawyers trained in different national systems can analyse European legislation and cases. Van Gestel and Micklitz (2014) question whether it is possible for an English lawyer trained in common law system and a German lawyer trained in civil law system to take their established 'methods' and apply this to European law in an 'objective' and 'just' manner. Instead, a new method has to be adopted that all lawyers follow when interpreting European law.

Non-doctrinal approaches

Moving from 'positivist' notions of the law evident in doctrinal approaches seeking 'legal truth', socio-legal studies takes methodological and epistemological approaches from the social sciences to examine how the law works as a social entity (Chynoweth, 2008). A non-doctrinal approach therefore involves an 'external inquiry' in relation to the law as opposed to an 'internal inquiry' evident with doctrinal approaches (ibid.).

Methods in non-doctrinal approaches reflect methods used more generally in the social sciences: for example, ethnography (Griffiths, 2005), discourse analysis (Seneviratne, 2005), as well as quantitative approaches (Spamann, 2009). The social science research methods used for data collection in this thesis are explored further below.

Methodology in legal geography

In a rare and explicit contribution to method in legal geography, Braverman (2014, chapter 5) notes that "[l]egal geographers are woefully unreflective about their methodologies" and emphasises that, "engaging in mutual conversations about methodology can enhance interdisciplinary dialogue and may bridge over otherwise fraught waters that run between what are constructed as disciplinary divides". Braverman highlights how discussions in regard to methodology in legal geography therefore have the potential

to join together the archipelagic thinking that Delaney describes as causing an 'impasse' in the interdisciplinary project (Delaney, 2010, see section 2.1). In venturing forward with establishing a programme for methodology in legal geography, Braverman (2014, chapter 5) highlights the benefits of "branching out to new disciplines and territories, including anthropology and sociology" noting that "[i]f legal scholars and scholars of legal geography have been under-attentive to questions of method, these questions have been at the core of anthropology, and of cultural anthropology in particular, for many decades".

This section does not dispute Braverman's call for exploring disciplines with a more attentive approach to methodology, but aims to expand on this by highlighting that the importance of overcoming the 'impasse' of legal geography (see section 2.1) necessarily involves forming a more integrated research methodology. This integrated research methodology relies on taking both a doctrinal approach to the law, often as an entry-point to the research, and then adding to this with ethnographic approaches (see also Valverde, 2012). As Fernandes and Varley (1998) note, most urban research takes legal phenomenon for granted. This thesis therefore takes the perspective that analyses of law in urban contexts add *technical* substance – meaning legal doctrine, rules and legal documents (Riles, 2005) - to ongoing debates in urban theory (c.f. Valverde, 2009, 2012). This technical substance adds a new analytical layer to researching the city and urban processes and therefore a new mode of explanation in understanding how cities work.

3.4 Methods used in this thesis

The research methodology for this thesis relied on doctrinal analysis of Kyrgyz domestic legislation (see Appendix One for a list of legislation used indirectly or directly in the research) as well as international legislation combined with ethnographic methods to form a 'mixed-method' approach. These are outlined further below.

Doctrinal analysis

The selection of Kyrgyz legislation was based on using key (legal) terms which related to the research themes. These key terms therefore included: 'internal migration', 'property', 'housing', 'privatisation'. Conversely, the term 'neoliberalism', for example, would not be a useful key word for finding legislation relevant to the research topic. 'Neoliberalism' would not feature in the legislation because of its 'political'

attachment. Such an incorporation of the word would disrupt law's ostensible neutral, value-free and closed characteristics (see Section 2.1). 'Privatisation', on the other hand, which in this thesis is linked to the neoliberal agenda, is included as a legal act and as a legal definition, although this definition becomes distanciated from the neoliberal agenda and is rather more procedural. The search terms were translated in to Russian and used in a Kyrgyz legal database called TokTom (http://www.toktom.kg/). The database is accessible only by paid subscription, which I had access to in Kyrgyzstan at the American University of Central Asia (AUCA). Like other legal databases (such as LexisNexis and Westlaw used in European legal contexts both in academia and practice), the database provides the 'current' status of a piece of legislation, when the law was enacted (as well as repealed), the amendments that have been incorporated into the law, together with the legislation which authorised this, and the substantive parts of the law (i.e. what the law is actually saying). The legislative acts were only available in Russian and were translated by myself with the support of Kyrgyz-trained lawyers on more technical issues.

As with other (non-legal) search engines, such as Google, TokTom works by inserting a legal search term which then reveals a list of results (i.e. legislative acts) including that term in the title and, if required, the main text. One search term could therefore reveal over a hundred different legislative acts. A second stage therefore required a more manual 'sifting' method to determine which legislation was appropriate for the research. As the research developed and extended into different areas, more legislative acts became appropriate. The research also involved analysis of legislation that is now out of date, but still relevant for the historical aspects of the research in understanding links between 'socialist' and 'post-socialist' policies as well as the legal developments and fine-tuning of post-socialist legislation over time (see papers I and II).

I use 'legislative act' to refer to different types of legislation but it is important to note that these operate in hierarchy. A lawyer in Bishkek explained to me the different types of law and where it would fit in the hierarchy of legal authorities. The Constitution is regarded as the highest form of legal authority above, for example, ordinary laws and a presidential decree. This means that should there be any significant conflict between different types of law, the law highest in the legal hierarchy prevails.

The difference between being trained in a common law legal system and conducting research in a civil law legal system positioned me as a

simultaneous 'insider' and 'outsider' within legal discussions.[26] As I trained in a common law legal system in England, I decided to interview several lawyers in Bishkek to learn about how the civil law system works more generally in Kyrgyzstan. During these interviews with lawyers, my positionality seemed to traverse between lawyer and non-lawyer. I understood the more 'global' discursive debates and concepts of the legal system that translate into both a common and civil law context rendering me as an 'insider,' but at other times the civil law system confused me and also seemed less 'objective' and more 'interpretative' to the common law system, which led to a heated debate one afternoon with an academic jurist. I often questioned whether I would have had the same thought processes and issues if I were doing my field research in another country such as India where, following colonial rule, the legal system follows the English system much more closely. This led me to question the 'rigour' of my data from the position as a lawyer carrying out doctrinal research as I had not trained as a lawyer in a civil law system, let alone in Kyrgyzstan. This perhaps highlights the limits of my doctrinal pursuit emphasising that even though I am a trained lawyer, I was still an 'outsider' when it came to Kyrgyz law. This further emphasises both the partiality and situatedness of knowledge production in my research.

Ethnography

An ethnographic approach to the research was also taken particularly to understand how the implementation, production and negotiations of law became 'domesticated' in localised contexts (Creed, 1998; Stenning et al., 2010). This followed research designs by other scholars working in post-socialist contexts and particularly those "who seek to construct more pluralistic accounts of post-socialist transformation while contributing to broader critiques of universalizing knowledge" (Hörschelmann and Stenning, 2008, 340). An ethnographic approach therefore highlights the many post-socialisms that exist spatially and temporally and especially how post-socialist transformation is negotiated and interpreted by locally embedded social actors (ibid.). How 'neoliberalism' or 'socialism' is experienced in these localised contexts, in turn, destabilises the very nature of such categories (Creed, 1998).

Bishkek was chosen as a case study city to understand the everyday workings of the law in a post-socialist context. This was partly due to the institutional reasons (the research project offered a choice of countries

[26] The common law legal system orginated in England and operates in juridictions previously associated with British colonial rule and, thereby, the English legal system (India, USA, Canada, Sri Lanka, for example). The civil law system orginated in continental Europe (including Russia) and is the main system in mainland Europe and former colonies. Kyrgyzstan uses a civil law system inherited from Russia.

where the NCCR North South is based) and also theoretical reasons. In particular, knowledge production on the 'post-socialist' city remains geographically fixated on ECE and Russia (Sykora and Bouzarovski, 2012; Grubbauer and Kusiak, 2012). I wanted to engage with these debates on post-socialism but from a different, under-studied geographical context (Herbert, 2010).

In taking Bishkek as the case study city to explore the everyday workings of the law, I draw on Burawoy's (1998) extended case method. As Burawoy (1998, 5) notes:

> "The extended case method applies reflexive science to ethnography in order to extract the general from unique, to move from the 'micro' to the 'macro', and to connect the present to the past in anticipation of the future, all by building on pre-existing theory."

The extended case method therefore seeks to build on existing theory. As Herbert (2010, 78) notes, this can "provide an effective means by which the researcher travels from theory to data, and back again." Below are the different ethnographic methods used in this thesis.

Shadowing

A key part of the research involved 'shadowing' applicants through the *propiska* and property registration processes. This involved attending various offices in Bishkek such as passport agencies of the Ministry of Interior where forms were provided for registration in the city and where the applicant's new ID is collected after the various administrative procedures are fulfilled. Each applicant would therefore make several visits to the passport agency to establish which forms were necessary, submit their documents (which often took several attempts) and finally collect their ID. Other offices included the Address Bureau in Bishkek, which verified each property address in the city and the *domoupravlenie* which would certify that the applicant was living in the building in which they wish to register against as their place of residence.

'Unofficial' means of registering were investigated by, again, shadowing the applicant who would, for example, meet a house owner to organise a 'fake' address or offer various gifts to state officials in order to expedite their registration process.[27] While the applicants knew I was 'shadowing' them,

[27] Gifts include money as well as chocolates, alcohol, and sweets. Defining this as a 'bribe' seems too extreme and out of context from the way the applicant would describe this to me. As one applicant noted: "it's to say thanks as they have gone beyond what they are supposed to do; they helped me out".

the members of staff at the various offices did not know this and, at times, would question my presence as an obvious foreigner who would not normally attend such administrative situations. Through my visibility as 'non-Kyrgyz' and 'non-Russian,' I was often asked to leave the offices where forms were being filled-out, leaving my research assistant to take over the data collection exercise alone for temporary periods. I also felt that my entrance into the space of the passport office would alter the practices of the officials working there, as they seemed suspicious of my presence. During an interview with one nervous official from a passport office I was asked not to write down or record certain aspects of the registration system which could bring 'shame' on Kyrgyzstan.[28] This knowledge by the applicants and lack of knowledge by those working in the system made me question whether I was a participant or non-participant observer (Burawoy, 1979; Laurier, 2010; Watson and Till, 2010), and I have since settled on 'shadowing' as a closer definition of my research method.

Interviewing

Legal doctrinal analysis and shadowing were combined with interviewing as they "typically aim for depth and detailed understanding rather than breadth and coverage … [and] they provide for probing meanings and emotions" (McDowell, 2010). Interviews were therefore held with applicants who were in the process of obtaining their registration documents as well as officials working within the registration system together with lawyers and activists who had an interest in the registration system often from a human rights perspective. The property-orientated research questions also involved interviews with residents of *novostroikas*, central government ministries, local administrations, lawyers, as well as informal administrators (*kvartal'nyi)* for the *novostroika*. The interviews varied between 30 minutes and two-hours: often between 30 minutes and one hour with international NGOs and government officials and up to two hours with residents of *novostroikas*.

In total, 90 informants were interviewed (see Appendix Two). Informants were typically obtained through snowballing, and the institutional contacts of the American University of Central Asia where I was a visiting scholar for a total period of six-months were especially useful. A topic guide was used but altered slightly for each informant. In the *novostroikas*, a local-NGO that I worked with throughout the duration of the fieldwork, would introduce me to several families and then I would 'snowball' other families

[28] In stating this, the informant switched from Russian to Kyrgyz and addressed my research assistant directly.

from them (Cassell, 1988).[29] International NGOs were relatively easy to access whereas other informants were more difficult: the data from paper III and paper IV, for instance, involved establishing the process of legalisation for the *novostroika* and then going to the appropriate local and central government offices to try and find the right person to speak to. This often involved a more spontaneous style of accessing the interview by, for example, turning up at the office without organising an appointment in advance. This approach avoided the long and drawn out procedure of writing an 'official' letter, which government officials often required.[30]

I sometimes felt dissatisfied following my interviews with staff working in the central and local government departments. In these situations, constructions by the informant of my identity as a 'foreign researcher' who came to Kyrgyzstan 'to write a report and leave' seemed to be more emphasised than in other interviews. The interviews always took place in the offices of the government department or ministry, where I sat behind the desk of the informant who remained in his usual place. I began to note down the 'non-representational' aspects of these interviews. These non-representational acts were often just as important as what was said between us (Thrift, 2008). I felt that many of the informants in these situations performed in a way (initially, at least) that they had no time for me, a 'foreign researcher'. They would check emails, answer their mobile phone and even read the newspaper as I was asking them questions. At times, the informant would eventually become more interested in my research and the interview, for me at least, became less structured and more 'in depth'. At other times, these 'official' interviews often included a 'subordinate' of the person being interviewed, such as their secretary or someone beneath them in the work hierarchy. On occasions, I was allowed to interview and speak to the 'subordinate' afterwards and this would often lead to a more 'in-depth' conversation through a more balanced power-dynamic (c.f. Kvale, 2006).

Reflecting on my position as a 'foreign' researcher and, in Kyrgyzstan at least, as a non-lawyer, raised uncomfortable, yet self-critical, questions during my field research: what was my role as a researcher in Kyrgyzstan

[29] The NGO introduced me to residents and (in)formal *kvartal'nyis* of the *novostroikas* (depending on the legal status). I also attended three of their training sessions with Self-Help Groups established within the *novostroikas.* After the first visit in 2011, the chairman of the NGO asked if I would write a short report for them detailing my visit to the *novostroikas*. I did this as way of saying thank you for their help with my data collection. I also agreed to write a report after my second and third visits and these were incorporated in the policy brief that forms Part II.

[30] The 'official' letter, I felt, was a delay tactic that government officials would use to avoid speaking to me. During my first field trip, I wrote official letters –a signed and stamped letter from the American University of Central Asia - but the process of organising an interview would still take weeks, often months, and several telephone calls. In later field visits, I carried an 'official' letter with me from the University of Zurich and the American University of Central Asia which outlined (in Russian) the nature of my research. This seemed to satisfy most of the 'elite' informants but often involved returning the next day for a meeting or waiting for an hour or so before the informant could speak to me.

and further, if research is to be that 'shared' and 'dialogic' in between space (England, 1994) of the 'researcher' and the 'researched', how exactly was I sharing that space? This became especially pertinent when considering the format of this PhD. It became clear from an early stage that I would write a cumulative dissertation based on a series of academic articles. By the nature of 'a' PhD, rather than 'my' PhD, these academic articles engage in discourse largely for an academic audience. In addition, the journals I chose do not necessarily target other scholars working on Kyrgyzstan or even Central Asia, but rather on law, urban studies and planning where access to the publications is secured behind 'pay-walls'.[31]

In light of these constraints and my desire to reach a more 'local' audience, I decided that publishing a policy brief would open up the shared space of my research allowing me to form a more active engagement with the field as well as breaking-down the divide between 'researcher' and 'researched'. In making the space more accessible to those individuals and institutions that form the 'field' of my research, the policy brief was written in both English and Russian (the latter being the general language of policy in Kyrgyzstan) and distributed in print form and with the help of a local policy think-tank at local policy meetings and conferences. Most importantly, the policy brief was written with a Kyrgyz human rights lawyer. I had previously interviewed the lawyer to develop an understanding of how Kyrygz law works in comparison to English law, yet by collaborating with the lawyer, the 'field' began to form a wider part of the research *process* as a respondent also became involved at the publication stage (see England, 1994). Moreover, I believe that this contribution countered, to a certain extent, some of the challenges I was facing as a 'foreign' researcher – where I felt I was the distinct 'other' to my respondents – and gave a form of 'local' legitimacy to the output of my research.

I was careful about my use of vocabulary during the interviews. Drawing on comparisons with the 'Soviet' period during the 'elite interviews'[32] could annoy the informant as they did not want Kyrgyzstan to be associated with this period or they did not associate themselves with the period if they were of a certain age (i.e. younger).[33] Interviews with residents of informal settlements were often longer with greater opportunity to explore

[31] One publication was available for free early download for the first month it was published online.
[32] My use of 'elite' comes from McDowell's (1998) work on interviewing bankers in the city of London. Here, I am using it in a way to position myself as the 'researcher' in relation to the 'researched'. It was often during these interviews where I felt less 'control' or 'power' over the general framing of the interview. I was, for instance, told that I could not record the interview or I needed to approve a set number of questions beforehand. Thus, by using 'elite', I am not equating this group of people to a higher position or class in society, but rather positioning myself in relation to the interviewee.
[33] See Hann et al. (2002) for debates on the revelance of 'post-socialism.'

different areas of the research over tea (*chai*) and bread (*laposhka*). Some of the other informants, notably long-term Bishkek residents, referred to the residents as 'squatters' ('*zakhvatchiks'*) or even the more derogatory term '*myrk'* (meaning an uncultured villager), this clearly would have offended the residents especially given the way they interpreted their legal right to the land as outlined in Paper III. Such terms were avoided, although the residents knew of this labelling and raised issues with it at several times during the interviews.

I sometimes felt that I failed to manage the expectations of my informants who often merged me with other 'foreigners' who visited them from aid agencies. On several occasions, I would receive a phone call from an informant two or three days after a visit to a *novostroika* asking how I would now help the residents. In the 'elite' interviews, lack of money often featured as it seemed that the informant was sussing out whether I was a potential donor or not. In learning from this, I began to say from the outset of the interview that I was not from an aid agency. This managed the expectations of the informants but also, at times, restricted data access: on one occasion, two women whom I was about to interview from a *novostroika* left the room no longer interested in talking to me. However, I felt that if I did not make it clear that I was not from an aid agency, the interview would easily turn into an endless list of problems related to the *novostroika* or funding problems of the government department rather than focus on the research questions I had come to investigate (see Steimann, 2011, who also discusses similar experiences in Kyrgyzstan).

Most of my interviews were held with a research assistant. Over the course of the fieldwork I employed five different research assistants who were either bachelor students from the AUCA or another university in the city. One of the research assistants, whom I used for the longest period in 2011, had already graduated with a masters from a university in London and had since returned to Kyrgyzstan. The research assistants were most important for the interviews held in Kyrgyz in the *novostroikas*. Most of the informants in the *novostroikas* had no or only little knowledge of Russian or preferred to speak in Kyrgyz. 'Elite' interviews were typically held in Russian with government officials and other local NGOs, and English (and once in German) with international NGOs. Interviews in Kyrgyz were translated during the meeting as I have little knowledge of this language. Interviews in Russian generally involved translating what I said in a mixture of English and Russian, while I could broadly understand the Russian responses without translation; this was also more effective in establishing a flow in the conversation.

My return visits to Kyrgyzstan were important for getting updates from informants I had spoken to previously. This was particularly important in terms of re-visiting the novostroika discussed in Paper III and IV to get an update on the legalisation process over an extended period.

Documents

The research topics – notably the reform of the *propiska* system and the legalisation of Ak Jar *novostroika* – were also political issues unfolding in the city and featured frequently in newspaper articles. A valuable resource for the research was the daily print-based and online newspaper specifically reporting on issues in the city, *Vercherniye Bishkek!* (Evening Bishkek!). Through reading this, I remained up-to-date on issues when I was not in Kyrgyzstan. Moreover, it often provided background information on various sub-topics I was investigating and each article included an online comments section where local readers of the newspaper would offer their own opinion on the article and the issue at hand, which, for some articles, would turn into a debate between different commentators.

3.5 Making sense of the data and writing up

The data analysis part of the research involved drawing together the doctrinal approach to legal research together with the ethnographic material. This combination of the two epistemological traditions was guided largely by the interview data. Thus, the preliminary step of coding the interviews by marking words or phrases on the interview transcripts was intended to summarise the meanings of certain passages (Rubin and Rubin, 2012). This involved moving from *in vivo* coding – themes which appeared in the text and formed the respondents' own words – to analytical coding which "emerge from a second level of coding that comes after much reflection on descriptive codes and a return to the theoretical literature" (Cope, 2010, 446). 'Materiality' is, for example, an analytical code that arose from the descriptive coding from the interviews with the respondents discussing the legalisation of a settlement in Bishkek. These analytical codes were merged with other ethnographic material (from the observations and newspaper reports) and with doctrinal legal analysis to create a research narrative that forms the basis of each individual scientific paper. The research question for each scientific paper formed through a combination of empirical results together with conceptual themes (and knowledge gaps) evident in the legal geography canon.

The writing process of this research was informed by the cumulative nature of the thesis. Writing began immediately after the second field trip in July 2011. The second intense writing period followed the third extended field trip in 2012. The last short field trip was then followed by a continuous writing period (September 2013 – July 2014), which led to papers III and IV and the overall framework of this thesis. As Mansvelt and Berg (2010, 343) note, "[t]he process of writing constructs what we know about our research, but it also speaks powerfully about who we are and where we speak from." Thus, I take the perspective that what I 'present' here is partial and situated, as informed by my personal experiences and background, yet offers a critical interpretation of the relationship between law and space in the post-socialist city.

4. Bishkek in transition:
Migration, property and illegal Settlements

"If it's bad in Moscow, it's worse in the provinces"

(Nikita Khrushchev (c. 1970), First Secretary of the Communist Party of the Soviet Union, 1953 – 1964)[34]

This section introduces the case study city of Bishkek and sets the scene for the empirical papers and policy brief that follow in Part II. First, a historical introduction to Bishkek, focusing on migration movements, is provided as a departure point for exploring post-socialist urban transformation in the city. In the following section, migration, and specifically internal migration to Bishkek following the collapse of the Soviet Union, is discussed. The *propiska* system is then introduced as a regulatory mechanism implemented during the Soviet era to control migration to cities and compared with how it functions today under a new legal label. The subsequent section links the regulation of migration to property rights in the city. Finally, the link between internal migration, (illegal) property, and unrest in the city is explored in relation to the development of 'squatter' settlements (*novostroikas*) on the urban periphery of the city after the 2005 Tulip Revolution.

4.1 Pishpek, Frunze, Bishkek: A tale of three cities

Bishkek developed from a small village and fortress founded in 1825 (Abazov, 2004). Then called Pishkek, the village grew more rapidly into a market town during the Tsarist era, eventually becoming a Bolshevik stronghold in 1917 (Abazov, 2004; Flynn and Kosmarskaya, 2012). In 1926, the city was given the name Frunze after Mikhail Frunze, a Bolshevik leader and Red Army commander in the Russian Civil War who was born in the city. It was not until 1936, however, following Kyrgyzstan's full membership into the Soviet Union as the Kyrgyz Soviet Socialist Republic,

[34] Taken from Wallace (1990, 203). Wallace (ibid.) notes that Khrushchev's statement was capturing the disparities between Soviet cities and between metropolitan and rural areas, and particularly the low living standards in the latter.

that the urban development of the city gathered momentum (Abazov, 2004). The city's isolated location began to play a strategic role during and after the Second World War as heavy and light industries were relocated from European regions to the peripheral Central Asian region. Along with the relocation of industry, Russians and other Europeans (Germans, Ukrainians) migrated to the Central Asian region (Schmidt and Sagynbekova, 2008). Between 1959 and 1970, Frunze grew more rapidly than any other city in the Soviet Union with its population increasing from 220,000 in 1959 to 431,000 in 1970 – almost doubling in size in 11 years (Harris, 1971).

Migration from European regions led to a 'Russified' city with ethnic Russians making up 68.8 per cent of the population in 1959 in comparison to the titular Kyrgyz population with just 9.3 per cent (Schroeder, 2010). Towards the final years of the Soviet Union, the balance began to shift as the largely rural Kyrgyz population increased and led to more internal migration to the city (Schuler, 2007). In 1989, the share of the ethnic Russian population had decreased to 55.7 per cent while the ethnic Kyrgyz population had increased to 22.9 per cent (ibid.).

4.2 Migration in (and from) Kyrgyzstan

The collapse of the Soviet Union in 1991 resulted in a name change for the city, from Frunze to Bishkek. The beginning of this period marked a stream of out-migration. Ethnic Germans, Russians, and Ukrainians left the country to return to their 'homeland' following the relaxation of citizenship laws (Alymbaeva, 2006, Schmidt and Sagynbekova, 2008).[35] Out of 102,000 ethnic Germans living in Kyrgyzstan at the time of the last Soviet census in 1989, 80,000 left for Germany between 1991 and 1996 (Abazov, 1999). Similarly, whereas in 1989 ethnic Russians accounted for 21.4 per cent of the population (being the ethnic majority in Bishkek), by 1999 this figure had dropped to 12.5 per cent (Liebert, 2009).[36]

These changes were particularly noticeable in Bishkek. By 2007 the Russian population in the city had decreased to around 25 per cent (Schroeder, 2010). Moreover, the deepening of rural poverty, particularly through inequitable distribution and privatisation of former collective (*kolkhoz*) and state-owned (*sovkhoz*) land (c.f. Steimann, 2011), contributed to the increase in internal migrants of largely ethnic Kyrgyz background

[35] Schuler and Kudabaev (2004) note that different ethnic groups responded in different ways to the newly available opportunity to migrate. Germany, for example, had a clearer policy of migration in the early 1990s, which in resulted in a near 90 per cent loss of the German population from Kyrgyzstan.
[36] See Commercio (2010) on Russian minority politics in Kyrgyzstan.

moving from the rural areas, and typically the northern regions up until the late 1990s, to the capital, Bishkek (Thieme, 2008; Schmidt and Sagnbekova, 2008; Flynn and Kosmarskaya, 2012). The ethnic Kyrgyz population of Bishkek is today closer to 70 per cent and the Kyrgyz language is heard just as much as Russian in the city (Flynn and Kosmarskaya, 2012).[37] The migration of ethnic Kyrgyz leaving Kyrgyzstan to pursue work opportunities in Kazakhstan and Russia became more pronounced during the mid-2000s (Isabaeva, 2011).

Outside of these statistics, more recent studies on migration in Kyrgyzstan have developed a relational approach by drawing attention to the ways in which the movement of some can constrain (or compel) the movement of others (Reeves, 2011; Isaebaeva, 2011). Thieme (2008) addresses this through the lens of multi-local livelihoods. In observing that migration is rarely an individual decision but rather one taken by the whole family, Thieme examines the separation of the family as some migrate while others remain behind. Relational studies have been important in going beyond understandings of those who remain behind as 'passive recipients' of remittances and instead examine 'staying put' as an active *process.* These studies also address migration through a gender lens by examining how the absence of male family members alters the way in which female mobility within and beyond the home is evaluated. For those women left behind, the experience can be both empowering, with the increase of personal economic autonomy it can offer (Reeves, 2011), as well as burdensome, as women juggle multiple roles and expectations of being breadwinner, mother, wife and daughter-in-law in supporting the older and young generation left behind (Thieme, 2008).

4.3 Regulating internal migration: "No documents, no person"[38]

In understanding the dynamics behind internal migration in Kyrgyzstan, problem-free notions of citizens moving internally within their nation-state are challenged to highlight how, qualitatively, this form of mobility becomes embedded between past (notably here, 'Soviet') and contemporary legal frameworks, identities and contradictory claims to the city. During the Soviet period, the *propiska* system was introduced to 'count' (*uchet*) and 'cleanse' (*ochistit')* the cities' urban populations (Kessler, 2001). While

[37] An exact statistic is unobtainable given that so many of the residents living in Bishkek do not, or cannot, register with the local authorities (i.e. they cannot obtain a valid *propiska*)

[38] Taken from Mikhail Bulgakov's (1996 [1967]) book, *The Master and Margarita* as a comment on Soviet bureaucracy and the importance of documents for identification purposes: "'You were right' said the Master impressed by the neatness of Korovyov's work, 'when you said: no documents, no persons. So that means I don't exist since I don't have any documents.'"

officially abolished following the collapse of the Soviet Union, the new system, known as 'registration' (*'registratsia'*), retains key aspects of the former system and is still referred to as *propiska* by residents of the city and by those working in the system.

The *propiska* was a form of internal passport introduced in specific areas of the Soviet Union under Stalin in 1932, and in Kyrgyzstan in April 1939. As Pipko and Pucciarelli (1985, 917), writing at the time of the Soviet Union, note:

> "The *propiska* is a right to live in a particular administrative district, on a particular street, in a particular building and apartment … it is akin to an internal visa because it provides one with official permission to take up residence in a particular place."

Initially, the *propiska* was distributed only to residents living in urban areas, industrial centres and border zones of the Soviet Union (Matthews, 1993). The *propiska* monitored the populations of these 'regime' areas and was designed to remove those superfluous individuals[39] who were not engaged in 'socially useful labour' (Matthews, 1993, 28).[40] After the collectivisation of farming in rural areas and the resulting migration of individuals to cities trying to escape rural mass famine, "the system also had the effect of excluding large swathes of the population from possession of a passport, and thus, effectively, of obtaining resident rights in passportised areas" (Reeves, 2013).[41] Rural populations were specifically excluded from the passportisation process. As Ioffe and Janis (1987) and Höjdestrand (2003) argue, this formed a 'territorial stratification' between urban and rural the populations. Those who were fortunate to have the right to live in cities often had better access to foodstuffs and services such as medical care and schools in comparison to those living on the collective farms. Soviet governments were biased in favour of cities and suspicious of the countryside "where the farming population, suffering from heavy taxes, compulsory deliveries of foodstuffs and collectivisation, was reluctant to support ambitious plans of industrialisation" (Enyedi, 1996, 114).

In July1974, 'passportisation' was expanded to rural areas of the Soviet Union.[42] This rural expansion was complete in Kyrgyzstan by 1981 (Dzhunkovskii, 1982). Restrictions on migration, however, still applied (van

[39] This included those not involved in 'useful' production or the work of institutions as well as criminal and other anti-social elements hiding in the towns (Kessler, 2001).
[40] Kessler (2001) notes that, in Moscow alone, 65,904 persons were denied a passport and subsequently 'removed' from the city in the 1930s.
[41] The 1939 Decree of the Frunze City Soviet declared that every citizen reaching the age of 16 living in the city, entering the city or changing of place of residence within the boundary of the city needed to obtain *propiska.* The Decree also notes that collective farms and individual farmers are not entitled to a *propiska*.
[42] One newspaper noted that it was necessary to extend the passport system to rural areas because of the "big social-economical and cultural transformations we [the Soviet Union] had experienced during the past 22 years" (Toktosunov, 1975).

den Berg, 1989). If a Soviet citizen wished to move from one address to another, either permanently or temporarily, they would have to obtain permission from their local division of the Ministry of Internal Affairs. Migrating permanently to a city was often refused unless it fulfilled a labour shortage.[43] It was particularly difficult to move to the bigger cities of the Soviet Union, as well as the regional urban areas of the republics such as Kiev, Tbilisi or Bishkek. By the time 'passportisation' was introduced to rural areas, the *propiska* system had become an official form of identity infiltrating into the everyday practices of life in the Soviet Union (Pipko and Pucciarelli, 1985). As Höjdestrand (2003, 2) notes, "the *propiska* became (and to a large extent remains) the precondition for most civil rights and social benefits such as formal employment, access to housing, medical insurance, education, unemployment benefits, ration cards, the right to vote, even access to public libraries."

Following the collapse of the Soviet Union, the *propiska* was officially abolished in many of the newly independent countries. New constitutional enactments guaranteed freedom of movement and choice of place of residence for all citizens on the territory of the country.[44] In Kyrgyzstan, this enactment was officially incorporated into the country's first constitution as an independent state in 1993,[45] although attitudes towards the relaxation of the *propiska* in relation to migration were evident during the final years of the Soviet Union (Sergeev, 1990). The enactment of these new constitutions did not, however, abolish the *propiska* altogether. Rather, the *propiska* system was legally repackaged into a less restrictive form under the new name of *registratsia*. Individual regulations were implemented in a piecemeal fashion during the 1990s and were eventually codified by the Kyrgyz Law on Internal Migration enacted in 2002.

These regulatory changes, introduced in many post-socialist countries, provided the freedom to move within the country unrestricted. Nonetheless, upon arrival in the new place of residence, bureaucratic and complicated procedures remained. As Höjdestrand (2003, 5) notes, in discussing the *propiska* in Russia, in light of few practical changes, the "administrative practice permits the old system to linger on". As explored further in paper I, the *propiska* remains important for some groups of

[43] This is similar to the *hukuo* system introduced in China, a similar form of residence registration system, originally implemented to "control the urban population at a level which would meet the demands of industrial development so as to avoid unproductive expenditures (Ying and Chui, 2010, 297) and whereby "cities were closed off to the peasantry by 'invisible walls' … poverty was locked in the countryside" (Chan, 1996, 134). See also: Cheng and Selden, (1994); Chan (2010); Zhang and Wang (2010); The Economist (2010).

[44] In illustrating the malleability of such laws at the time (and still today), the city of Moscow refused to implement the law on the right of citizens to choose their place of residence, as O'Leary (1994) notes: "Moscow's administration charge that the *propiska* system was one of the few tools the city possessed to help control the flow of immigrants and 'speculators' into an already crowded city and a stricter registration system is required to maintain safety in the city".

[45] "Everyone has the right to freedom of movement and choice of place of residence within the territory of the Kyrgyz Republic" (Article 14(3)).

individuals in Bishkek today, particularly in relation to (officially) accessing public services such as schools and health centres, paying taxes, opening bank accounts and for voting in elections.[46] The system, as was also evident during the Soviet period (Höjdestrand, 2003), remains corrupt (a common feature of many aspects of public administration). In Kyrgyzstan, the passport offices, which issue the ID-card in relation to the new process of *registratsia,* were a key target of the government's 'anti-corruption' campaign in 2012 (OSCE, 2012).

4.4 *Propiska* and property rights

Living in the city during the Soviet period was an aspiration for many Soviet citizens. As French and Hamilton (1979, 7) note, "urban living has always been … seen as the highest form of socialist life – the town is the best place where socialist consciousness can develop the necessary environment for achieving the perfection of a socialist society". Moving to the city, however, was not always easy. The right to live in the city required a *propiska.* Yet obtaining a *propiska* was dependent on receiving a property in the city, which was normally dependent on gaining employment there (Pipko and Pucciarelli, 1985). Several options existed for those who wanted to move to the city from rural or smaller cities: if possible, live with relatives or acquaintances (providing the sanitary norm was not exceeded),[47] gain employment with an organisation that provided housing to its employees, or informally pay non-regulated rent to sublet an apartment (O'Leary, 1994).[48] As Morton (1980, 237) notes "[e]very step in the process from acquiring a *propiska* to receiving comfortable housing is measurable in years of anguish, aggravation, discouragement, and resignation." These inevitable complications led some individuals to pursue fraudulent strategies by obtaining a *propiska* through 'sham' marriages or by bribing officials working in the local administration offices (Buckley, 1995). Others who had a property in the city, often lived with other family members but remained registered at the other address in the hope that their property would soon be demolished for slum clearance purposes

[46] There are unofficial means of accessing such services, such as paying a 'bribe' to the head teacher of a school or a doctor in a health centre. The divide between official and unofficial is not, however, necessarily solely defined by having a *propiska* or not. Even if the individual does have a *propiska*, they might still have to pay a bribe, although perhaps less than someone who did not have a *propiska*. Moreover, labelling this as a 'bribe' in the traditional Western sense as something illicit is not so directly culturally translatable in the Kyrgyz context. Nonetheless, these sorts of practices in Kyrgyzstan were the target of several local NGOs including the Anti-Corruption Business Council and Citizens Against Corruption. In 2013, Kyrgyzstan was 'rated' 150 out of 177 countries in the Transparency International's Corruption Perceptions Index (Transparency International, 2013).

[47] Sanitary norms were applied only in cities. The sanitary norm was the number of square metres each individual was entitled to in the Soviet Housing system (this varied across the Soviet republics). The norm was based on a medico-hygienic consideration, but was more likely used to curb the freedom of choice of residence and therefore control the size of urban populations in the Soviet period by setting a high standard during the continuing housing crisis (van den Berg, 1989).

[48] Renting a property or room above the regulated amount was an accepted practice by both housing officials and would-be tenants, although still illegal (O'Leary, 1994).

(Dzhunkovskii, 1982). Such slum clearances would entitle them to a new home typically in one of the city's better-equipped *mikroraions*.

Once registered somewhere, the property right under Soviet law, although still a 'tenancy', became relatively secure. As Höjdestrand (2003) notes, the municipality could not evict a tenant, even if they had failed to pay rent, unless cheaper accommodation was offered. Children could also inherit property from their parents (Maggs, 1990). The Soviet tenancy agreement therefore resembled a property right close to Western versions of private homeownership (van den Berg, 1989). During the privatisation era of the early 1990s, following the collapse of the Soviet Union, the important property meanings of the *propiska* crystallised as it served as documentary proof for transferring ownership of property from the state to the individual sitting tenant (this is explored further in paper II).

Those who rent properties in the city or live in the city's illegal settlements have particular problems registering with local authorities in Bishkek today. Commenting specifically on tenants in Russia, although also evident in Bishkek, Zavisca (2012, 134) notes that:

> "The persistence of the *propiska* … contributes to renters' insecurity. Landlords used to be motivated mainly by tax evasion. More recently … landlords still declined to offer renters a *propiska*, because they are worried this could complicate eviction by providing the tenant with permanent residency rights which bordered on ownership."

Papers I and II explore in greater depth the links between the *propiska* and property rights in relation to post-socialist urban transformation. An emphasis is placed on how Soviet and early post-socialist interpretations of the law in relation to internal migration and property continue to merge with contemporary versions of the law. Moreover, residents of Bishkek's illegal *novostroikas* are also restricted in obtaining an official *propiska* without an official address to register against. Paper III explores how, in negotiating definitions of illegality with the residents of the settlement, the state has minimised the effects of having no official address to register against.

Internal migration and urban transformation: 1990 - 2005

Linking urban change in Bishkek to internal migration during the late 1980s and early 1990s, Kostyukova (1994) draws on the initial establishment of 'informal' settlements on the outskirts of the city as a result of an

increasingly rural, ethnic Kyrgyz population moving to the city. Under the more permissive political conditions of *glasnost'* (openness), ethnic Kyrgyz began to protest against poor living conditions in the city. This protest arose from the growing ethnic Kyrgyz population who had remained in the city after studying there, but were living in unfavourable housing conditions (particularly in comparison to the ethnic Russian population) and often sub-letting accommodation due to the shortage of houses being built in the city.[49] As explored further in papers II and III, the *Ashar* (Kyrgyz for 'goodwill') movement formed as a response to this housing situation. In April 1989, approximately 30,000 young Kyrgyz 'seized' agricultural land on the outskirts of Bishkek (Kostyukova, 1994). Following a dialogue between the Soviet government and the protestors, by 22 June 1989 the government agreed to distribute land in what became the first *novostroika* settlement in Bishkek, Ak Orgo.[50] Several other *novostroikas* developed in a similar manner in the following years, largely housing residents who had already been living in Bishkek for five to ten years. Kostyukova (1994, 433) notes that following the establishment of Ak Orgo, conditions for getting a land plot changed from three years of permanent residence (*propiska*) in the city to 18 months, and for some, not even that.

During the early years of independence, establishment of the settlements began to differ qualitatively from those established in the Soviet period (Kostyukova, 1994; Parkinson and Talipova, 2005). Rather than a movement of migrants already living in the city to the urban periphery, settlements established after independence were largely formed by migrants moving directly from rural areas, as Kostyukova (1994, 433) notes:

> "Bishkek is surrounded today by a ring of settler's buildings which is almost equal to the area of the city itself. The territory of the capital is becoming blurred and indistinct. Since new migrants have absolutely no real chances of employment in Bishkek, they plunge into the creation of private farms in their plots. So far, none have been successful'.

From the collapse of the Soviet Union in 1991, the economic crisis following the loss of centralised administration and resource allocation resulted in the curtailment of state assistance to the building associations that were formed through the *Ashar* movement (Parkinson and Talipova, 2005). A new wave of *novostroikas* therefore emerged. These were

[49] Data from discussions with two founding leaders of the Ashar movement during fieldwork in 2011.
[50] As Kostyukova (1994) goes on to note, Ak Orgo became a 'hot bed' of political activism for the *Ashar* movement which spread nationally around the country. In particular, the movement was the first to propose the question of the language law in the newly independent republic, which made Kyrgyz the official language, replacing Russian. Russian was eventually reinstated as a state language in 2000, along with Kyrgyz, in an effort to curb the rapid out-migration of ethnic Russians, although arguably this was too late if it were to have any effect (Utyaganova, 2000).

significantly different from the initial protests of the *Ashar* movement as a large number of migrants began to move from rural areas and illegally squatted land on the outskirts of the city (Kostyukova, 1994; Parkinson and Talipova, 2005). This continued up until 2002/2003 (with the formation of settlements such as Ak Bata and Kalys Ordo) and resulted in the systematic land legalisation of the settlements by the government (World Bank, 2008).

The Tulip Revolution 2005: 'give us our land' (part one)

On 25 March 2005, Bishkek woke to a new interim government and the aftermath of widespread destruction following a night of looting and arson attacks in the city (Marat, 2006). The day before, Askar Akayev, a Kyrgyz academic educated in Saint Petersburg during the Soviet period and who had been president of Kyrgyzstan since 1990, was ousted by an angry mob mobilised by oppositional forces that stormed the White House (the Parliament building in the capital), bringing down the government in less than an hour. The eventual ousting followed a simmering of dissent over Akayev's increasingly authoritarian and 'clan'-style governance (Collins, 2006, c.f. Gullette, 2010) whereby Akayev promoted the interests of his own family and close relatives above the broader economic and political needs of the state.

The largely bloodless unrest in Bishkek, and other provincial cities of the country, was labelled, also by Akayev himself, as the 'Tulip Revolution' following a line of other recent uprisings in post-socialist contexts.[51] With the ousting of Akayev, a new interim government, led by Kurmanbek Bakiyev, realigned the geographical split that had previously beset the country. Originating from Jalal-Abad, in the south of Kyrgyzstan, Bakiyev made certain promises to those from the southern regions who had been previously politically underrepresented under Akayev's rule.

The demands from these promises began to unfold shortly after the unrest when thousands of *zakhvatchiks* ('grabbers') seized land unlawfully on the outskirts of Bishkek.[52] The interim government, either in fear of further unrest or perhaps aware of the initial promises made to the people in the south, failed to quell the actions of land grabbers. Reports from international organisations link the identity of the protestors who stormed

[51] Namely, The Orange Revolution that took place in the Ukraine from late November 2004 until January 2005 and the Rose Revolution in Georgia, November 2003.
[52] There are reports of at least 30,000 people 'grabbing' the land on the outskirts of the city (ICG, 2005; Marat, 2006).

the parliament in Bishkek, which led to the fleeing of Akayev, to the 'grabbers who began to demand land to build houses near the capital:

> "Many who participated in the revolution were society's poorest, often rural voters who remained marginalised despite overall economic growth, and who expected immediate improvement in their lives. They had two major demands – land and jobs – but it seemed unlikely the new government could satisfy either fully."
>
> (International Crisis Group (ICG), 2005, 12)

Those individuals who were involved in storming the parliament and ousting Akayev therefore saw the 'land-grabs' as a form of reward for the 'revolution'. These 'revolutionaries' had assisted in bringing Bakiyev to power, it was therefore their 'right' to take the land and live amongst the wealthier Bishkek residents after living for years in 'squalid' conditions either in or around the city or in the poorer rural regions (ICG, 2005). As Reeves (2014, ch. 6) notes, the 'Revolution' in the city had made the seizures legitimate: "grabbers (*zakhvatchiki)* were for a brief moment, turned into national heroes".

The Bishkek urbanite and the rural newcomer (2005 – 2010)

Several studies draw on the divide in Bishkek between internal migrants labelled as 'newcomers' (*priezzhie*) to the city, who are often ethnic Kyrgyz and speak Kyrgyz, and the 'old-timers' (*starozhily*) individuals, ethnic Kyrgyz, Russians and other nationalities, who grew up in Bishkek, or have been living there for a long time, and typically speak Russian among each other (Flynn and Kosmarskaya, 2012; 2014; Schroeder, 2010.[53] Flynn and Kosmarskaya (2012, 459; 2014) draw on stereotypes between the north and south whereby a "clear sense of discomfort, due to the physical presence of those from the South of the country in the city, is evident amongst many nationalities." Yet, in line with my own research results, Flynn and Kosmarskaya (2012) note that the old residents rarely have any contact with 'migrants' (or who they perceive as migrants), and especially those from the *novostroikas*.

[53] Russian is still commonly heard around Bishkek, regardless of ethnicity. During my time at the American University of Central Asia, the common language between students, for instance, was Russian. In spaces of internal migration such as the *novostroikas* and also the *Dordoi bazaar*, where many internal migrants work, Kyrgyz was the dominant language. Several ethnic Kyrgyz friends who grew up speaking Russian at home also highlighted that there was an expectation on them to know and speak Kyrgyz. A memorable episode from my field research was when my research assistant who spoke Kyrgyz at home with her family, was particularly deflated after asking an ethnic Kyrgyz boy in Kyrgyz language for directions to which he stumbled over his Kyrgyz in reply, resorting to him speaking in Russian: "He is Kyrgyz but he doesn't even know Kyrgz!" she said to me, disappointedly.

The 'grabbing' of land by migrants typically angers Bishkek old timers as it is perceived as 'illegal' (although see paper III) and thus an act 'stealing' land from the residents of Bishkek while also tainting the city's aesthetic appeal (c.f. Ghertner, 2011). Perceptions of illegality also merge with attitudes of laziness and greed towards the 'squatters.' Informants from my own field research stressed how the residents of the *novostroikas* also have their own land in the rural regions, following the privatisation of state land through the enactment of the Land Code 1999, as well as the land they 'illegally' appropriated in Bishkek. Yet, what is not mentioned by the old timers, is the inequitable and corrupt distribution of this land in rural regions reinforcing old Soviet hierarchies and inequalities with some individuals receiving land plots that are too small to sustain a living, or are too far away from the village or irrigation channels (Steimann, 2011). This often turned the land into a liability rather than an asset as landowners are taxed regardless of whether they use the land or not (Locher et al., 2012). Nonetheless, in the eye of the Bishkek residents I spoke to, the migrants living in the *novostroikas* had illegitimately received two plots of land: one in Bishkek and one in the rural regions. As a personal friend of mine who had grown up in Bishkek noted, "they're just too lazy to work on the land, so they come and earn easy money in the city's *bazaar* [market]". Flynn and Kosmarskaya (2012, 462) also add, migrants – especially pointing to those from the South – were identified by some of the old timers as 'well-off' residents of the *novostroikas*, "capable of buying apartments in the city, [they] are seen to have extorted money from the city administration and from other city dwellers." Materially, interview respondents from my research argued that not only had the migrants, through constructions of temporary houses (*'vremianka')*, tarnished the previous aesthetic and order of Bishkek on the outskirts of the city, but also their unwanted presence on the streets in the city centre was noted as they drop 'litter' and look like they 'don't belong'.

The 'People's' Revolution 2010: 'give us our land' (part two)

Only five years later, those who had installed Bakiyev in power in 2005 ousted him in a similar sequence of events. Bakiyev had promoted the interests of his own family by allocating high profile political positions to them. This continuing of 'clan'-style politics which was also prevalent under Akayev's regime was unfolding at a greater scale under Bakiyev and included the large-scale siphoning off of state-owned utility companies at a fraction of their market value. These sales compounded with power black outs during the especially cold winter of 2008/2009 which were followed by an announcement of increased energy tariffs for heating and water, with

the former set to rise by 400 per cent in January 2010 (Djumataeva, 2010). Such cost increases upon a largely impoverished population, already suffering from reduced remittances from their family members in Russia as a result of the global economic crisis, marked a 'tipping point' for a population that could no longer meet the payments.[54]

In a more spontaneous manner than in 2005, following unrest in provincial cities, crowds began to gather outside the presidential building in Bishkek demanding the resignation of Bakyiev. Violence soon broke out between the protestors and the snipers shooting from the top of the parliament building, which led to the death of at least 41 individuals (Levy, 2010). A state of emergency was declared and Bakiyev fled to his hometown in Jalal-Abad in the south of the country, later leaving the country by seeking protection in Belarus under its President, Lukashenko. Rosa Otunbaevya (from Reeves, 2010) became the interim president, and emphasised that this was a "People's revolution – the people were completely fed up with the regime."[55]

As with the 2005 unrest, land rights and housing issues played a key role in the uprising. Reeves (2010) notes that this reflected the antagonism between newcomers and old timers mentioned above:

> "[F]or many long-term Bishkekers, the claim of 'incomers' (*priezzhie*) to the city is a contested one. 'Get back to your village, then!' was an old woman's response to the television as a young man who had taken part in the uprising complained on camera about the lack of housing in the city and the need for land to be given to the 'people' for the construction of private homes.'

Unlike the 2005 Tulip Revolution, however, law enforcement agencies and groups of civilian vigilantes protecting the land of their family or their village largely halted the establishment of further squatter settlements on the outskirts of the city. As Osmonolieva (2010) notes "incomers staked out plots of land and then set off enmasse towards the centre of Bishkek to demand recognition of their claims". The police later arrested the 'land grabbers'. Unpacking the interim president's, Rosa Otunbaevya, declaration of a 'people's revolution', Reeves (2010) draws on the divide in the city between newcomers and the old-timers and notes, "[f]or many Bishkek residents, the young men who thronged to the city as the day

[54] In the World Bank's rankings (2014) Kyrgyzstan is third after neighbouring Tajikistan and also Liberia in relation to remittances as a percentage share of GDP. In 2013, this accounted for 31.4 per cent of GDP (Gross Domestic Product) compared to 20.9 per cent in 2009 and only 1.9 per cent in 2001 (Marat, 2009).

[55] Conspiracy theories abound in relation to who was really involved in instigating the unrest. Indeed, Vladimir Putin, who was then Prime-Minister of Russia, was becoming increasingly frustrated with Bakiyev's government, especially after the agreement to the lease extension of the US Military Airbase in the capital. Commentators therefore question whether Russia had a greater involvement in the uprising than is led to believe (Schuster, 2010).

began – predominantly poor, predominantly rural in background and Kyrgyz-speaking rather than Russian – were a 'people' with whom they only ambivalently identified."

5. Findings and paper synthesis:
Temporal modalities of legal space

In this section, I reflect on my overarching research question concerning the production of legal spaces in post-socialist Bishkek. Here, I draw on my main argument of examining legal space through a lens of temporality. The production of legal space or its 'making', to borrow Latour's (2010) phrasing in relation to law, unfolds over time and is embedded in historical trajectories such as the transition from 'socialism' to 'post-socialism', as well as other time periods that individuals associate with. In the context of Bishkek, the 2005 Tulip Revolution is a time frame that also plays an important role in the production of 'illegal' space on the outskirts of the city. In attempting to bolster this claim, I assign a temporal modality to each of the scientific papers (Part II) as a means of connecting my empirical data to this overall argument. The temporality of legal space is therefore captured through the modalities of *mutation*, *entrenchment*, *process*, and *assemblage*. This overall argument is followed by a policy recommendation, which is informed by examining the importance of temporality. The final part of this section introduces the scientific papers that follow in Part II and responds to the individual research questions posed for each question in the Introduction (section 1.5).

5.1 Temporalities of legal space

The different relations between law and space examined in the scientific papers that form Part II of this thesis, collectively emphasise how legal space is temporally and historically constituted. Therefore, in aligning with Santos (2002) and his notion of interlegality (see section 2.3), a multiplicity of legal spaces overlap with each other across different scales, different standpoints, and also different time periods. This overlapping of multiple legal spaces is therefore formed by their production in different time periods and events. As Benda-Beckmann and Benda-Beckmann (2014, chapter 1) illustrate, "once legally abolished, spaces that are legally defined do not necessarily disappear, but linger in practice and memory beyond formal expiry." This creates liminal legal spaces that fade in and out as a result of changes in official legislation while simultaneously resembling an attachment to expired legal orders. Moreover, tracing the process of law making over time reveals the different actors involved and how their involvement shifts and changes over time (Braverman 2009; Delaney, 2010; Blomley, 2013). Four temporal modes are given below as a means of

highlighting how each individual paper in Part II contributes to this overall finding:

1. *Mutation*: Paper I demonstrates how legal spaces of the city can mutate over time by incorporating legal orderings from the past and the present. The regulatory changes to the *propiska* system introduced in post-socialist Kyrgyzstan simultaneously retained and produced a 'mutated' version of the Soviet system. This mutation is evident in how the system still has the appearance of its 'socialist' predecessor – the same forms are filled out by applicants, the administrative offices are the same - yet in meeting the post-socialist conditions of Bishkek, the regulatory changes have incorporated the *propiska* system into the wider neoliberal logics unfolding in the city (c.f. Golubchikov et al., 2013). In particular, this mutation, while retaining the same administrative procedures as the previous system, is now closely aligned to neoliberal principles of 'home ownership' introduced during the privatisation era of the early 1990s.

2. *Entrenchment*: Paper II highlights the entrenchment of the neoliberal agenda through further legal 'enactments'. This entrenchment is linked to housing privatisation programmes first enacted by the government in the 1980s and early 1990s. These later enactments are designed to further encourage individual responsibility for housing, thus reducing the state's role as a housing provider, and, in one case, resolve unforeseen issues with previous enactments that failed to account for lingering socialist attitudes towards property. Temporally, this is taken to mean a further entrenchment of the neoliberal agenda, through legal enactments, in order to strengthen the 'transition' to capitalism. This highlights how the constitutivity of specific legal spaces are maintained, and even bolstered, through time with the enactment of certain legislation framed, in this case, by a specific neoliberal agenda (c.f. Delaney, 2014).

3. *Process*: Paper III examines how law making over time in relation to an illegal settlement on the outskirts of the city is a result of different state and non-state actors. Tracing the legal process from the settlement's establishment and 'illegal' beginnings in 2005 after the Tulip Revolution until 2013, emphasises how different groups and individuals appropriate legal processes to manipulate legal outcomes. Drawing on anthropology of the state literature (Ferguson and Gupta, 2002; Sharma and Gupta, 2006), the paper emphasises how, rather than being 'out there' and 'above' society,

law and the law making process is, instead, a disaggregated process produced through different actors over time.

4. *Assemblage*: Using the same empirical example as Paper III, Paper IV demonstrates how an analysis of law making over time allows for the incorporation of different material objects and how they operate in a legal network that connects with human actors (Latour, 2010). Assemblage provides a frame for incorporating these different actors into the law-making process together with how agency over law making process between these non-material and material actors varies over time (c.f. Bennett, 2005). The concept of the 'assemblage' (c.f. Deleuze and Guattari, 1987; DeLanda, 2006) serves as a useful framework for demonstrating the fluidity and mobile nature of law and how different components play different roles at different times in the making and production of legal space.

5.2 Policy message

This thesis aims to emphasise, from a policy perspective, that the enactment of legislation in not a panacea to urban problems (Fernandes and Varley, 1998). In Kyrgyzstan, often the existing legal framework – particularly in respect to regulating internal migration – was already comprehensible and well drafted to serve the needs of different groups. The Law on Internal Migration 2002, for example, considered owners, tenants, as well as those living in *novostroikas* (see the Policy Brief), yet the everyday practices were not responding to these legal directions. These everyday practices, however, are embedded within historical trajectories that confuse current legislation with past legislation. Therefore, practices continue despite official changes to legislation (Benda-Beckmann and Benda-Beckmann, 2014). Changes are needed, instead, in relation to understandings of property, for example, in Bishkek as well as administrative practices of the *propiska* system. Moreover, legislation is often enacted without the repeal of other legislation. This can lead to more confusion and also a greater interpretation of the law, which leaves room for corruption (see Policy Brief).

5.3 Paper synthesis

Paper I: Mutations of socialist law

Hatcher, C. and Thieme, S: Institutional Transition: internal migration, the propiska, and post-socialist urban change in Bishkek, Kyrgyzstan (Accepted: *Urban Studies*, February 2014).

The first paper examines debates theorizing the 'post-socialist city' and argues that concepts of transformation (and transition) are narrowly defined in terms of institutional change. The paper therefore draws on the notion of 'institutional mutations' (Golubchikov and Phelps, 2011) to emphasise how 'Soviet' institutions have both mutated to incorporate 'neoliberal' logics and 'fit' with prevailing 'legacies'. This is explored through a case study on the '*propiska*'.

Since the collapse of the Soviet Union, a series of legislative changes were enacted at the national and city-level to harmonise the *propiska* - or, to take its new name, *registratsia* - with international human rights norms that were incorporated into Kyrgyzstan's new Constitution. The article explores how this institution functions in contemporary Bishkek, especially in relation to the increase in internal migration to the capital since the collapse of the Soviet Union and the subsequent increase in 'informal' settlements on the urban periphery which is home to a largely internal migrant population. The paper demonstrates how neoliberal logics have been incorporated into the institution of the *propiska*, specifically through the notion of home ownership, which has re-spatialised Soviet inequality previously split between the 'rural' and 'the urban' shifting it to the urban periphery of Bishkek. At the same time, certain groups highlight this spatial unevenness, noticeably Bishkek 'old timers' as a key reason for retaining their perceived version of the institution.

In addressing research question (1) on institutional transformations in relation to internal migration, it became apparent that, despite legislative changes to the regulation of internal migration, the *propiska* system is still highlighted by local and international NGOs as curtailing the rights of internal migrants by restricting their freedom to move in the country. In highlighting these rights issues, informants draw on notions of the *propiska* as an anachronism from the Soviet past that does not fit with today's modern and forward-looking Kyrgyzstan. The informants therefore propose technological solutions in order to push the *propiska* away from this Soviet 'inheritance' which restricted rights, towards modernity in order to remove the disjuncture between post-socialist Bishkek and this Soviet remnant. At the same time, informants, notably the Bishkek 'old-

timers' would offer reasons for retaining the system, which also drew on its former 'Soviet' character, such as controlling migration and 'protecting' the city.

These perceptions of the *propiska* contrast, however, with everyday practices that represent 'neoliberal' changes enacted in the new legislation and reflect wider urban transformations in post-socialist Bishkek. Thus, the *propiska* system has incorporated the increasing importance assigned to private homeownership in the city, and post-socialist space more broadly (as discussed in paper II): those who own a property in the city face fewer difficulties in applying for a *propiska* in comparison to those who rent. Moreover, changes incorporated into the *propiska* system reflect, what the paper argues to be, distinctly 'post-socialist' representations of spatial inequalities, which have become remapped on the urban periphery of the city through the growth of *novostroikas*.

The institutional transformations of the *propiska* system, therefore, represent a blending of socialist 'lock-ins' with post-socialist, and distinctly, 'neo-liberal' change implemented legally, which are also evident in wider economic and political practices of the city, to reveal a 'mutated' institutional form.

Paper II: Entrenchment through legal (re-)enactment

Hatcher, C. (in print) Globalising homeownership: housing privatisation schemes and the private rental sector in post-socialist Bishkek, Kyrgyzstan, (Accepted: *International Development Planning Review*)

Paper II continues with the theme of private homeownership raised in paper I, by examining the legislation and legal practices that enacted the transfer of housing responsibility from the 'state' to the individual sitting tenant. Two separate 'movements' are outlined. The first examines the initial privatisation schemes introduced in the late 1980s and early 1990s and included the voucher schemes used to transfer property ownership from the state to individuals and the state's programme of distributing land on the outskirts of the city for individuals to construct their own homes. The second movement includes 'post-privatisation' programmes, which relate to the initial privatisation schemes. These 'post-privatisation' programmes include the introduction of Homeowner Associations (HOAs) and the subsequent legalisation of 'squatter' settlements, and tolerance towards more recent ones that remain 'illegal', by the state.

The implementation of these 'post-privatisation' programmes by the state, in cooperation with international organisations, further entrenches the notion of private homeownership (Singer, 2000; Blomley, 2004). The paper argues that this entrenchment of homeownership in Bishkek, in turn, marginalises an increasing tenant population of the city. This marginalisation is discussed in relation to the *propiska* system outlined in paper I, by illustrating the issues tenants face in obtaining a residence permit and the resultant problems in accessing public services in the city. In particular, this marginalisation is a result of the legal relationship between landlord and tenant that represents the interweaving of past and present legislation and the wider 'recombinant' (Stark, 1996) or 'fuzzy' (Verdery, 1999) property relations of post-socialism.

In responding to research question (2) on law's use of spatial boundaries, the legal boundary between different types of property rights – ownership and non-ownership – creates unequal, spatial divisions (Blandy and Sibley, 2010) stretching both the 'planned' and 'unplanned' city. First, this boundary was produced, officially at least, through pro-ownership schemes (housing privatisation, land distribution) and entrenched in 'post-privatisation' schemes (HOAs, legalisation of 'squatter' settlements). These initial schemes first enacted private homeownership in Bishkek while the importance of ownership was reinforced through post-privatisation schemes. The lingering of attitudes towards old laws and the gradual fading in of new laws (Benda-Beckmann and Benda-Beckmann, 2014) produces the inequitable boundary between ownership and non-ownership. This recombination of old and new laws ensures the 'invisibility' of the tenant in relation to the state, thus restricting them from officially accessing public services in the city.

Paper III: Processes of 'state' illegality

Hatcher, C. Illegal geographies: the legislation of a squatter settlement in Bishkek, Kyrgyzstan
(Accepted for special issue on Legal Geography, *Journal of Law in the Built Environment*)

Paper III draws on anthropology in exploring the plurality of the 'state' as a legal institution (Santos, 2002). Whereas papers I and II deal with the temporality of legal space by examining historical trajectories of the post-socialist city, this paper draws on a more localised account of 'law making' in relation to the legalisation of a squatter settlement on the outskirts of Bishkek. The empirical case is still embedded within wider notions of post-socialist urban change in relation to the establishment of *novostroikas* on the urban periphery, but also draws on more recent events in Bishkek's

history, including the 2005 Tulip Revolution. In particular, the paper focuses on the different 'state' and 'non-state' actors that become involved, over an extended period of time, in the process of law making, thus disrupting established binaries of state/law/formality and non-state/illegality/informality (Rajagopal, 2008). The paper therefore argues for a reinterpretation of the binary relationship between the 'state' and legality in order to highlight both the state's role in illegality and illegal space and the agency of 'non-state' actors over legal practices traditionally aligned with the 'state'.

In responding to research question (3), the making of law is examined through the legalisation process of the 'squatter' settlement focussing attention on the specific actors involved. Examining the individual actors unsettles categorisations of 'illegality' and 'legality' (Thomas and Galemba, 2013). The role of state actors implementing infrastructural upgrade projects in the settlement and promising legalisation destabilises discursive binaries that attach the 'state' to 'legality' and instead produces an interstitial space whereby the 'squatter' settlement lies between 'legal' and 'illegal'. Moreover, this blurring of 'legal' and 'illegal' connects with political instability in Kyrgyzstan more generally, which allowed the residents of the settlement to appropriate authority over the legalisation process. This led to a space of negotiation forming between the residents and the 'state', with the latter keen to pacify the residents and satisfy their demands in order to prevent further unrest. This also resulted in the residents taking on aspects of the legalisation process by, for example, producing their own architectural plan for the settlement; an activity that is officially supposed to be undertaken by the state (c.f. Das and Poole, 2004). The residents therefore began to 'domesticate' aspects of state law making in order to expedite the legalisation process.

Paper IV: Assembling legality through material and non-material components

Hatcher, C. Assembling legality: the material politics of a squatter settlement on the urban periphery
(Submitted August 2014 to *Environment and Planning D: Society and Space*)

In continuing with the same case study in paper III, an emphasis is placed on the piecing together of various material and non-material components in assembling legality. It is argued that the concept of assemblage provides a useful tool for understanding how legality develops gradually over time by different components aligning together. This alignment, however, may not result in the reified, end-state of 'legality' or 'illegality,' thus again

destabilising the dichotomy of legal-illegal explored in paper III. Different components can prevent the assemblage from aligning to produce 'legality.'

In responding to research question (4), the paper emphasises how a combination of material and non-material components play a role in assembling legality. Using assemblage as conceptual tool therefore invites an appreciation of examining legality through a lens of plurality by understanding the various components involved, together with an emphasis on how these components piece together and also fall apart over time. In particular, non-material components such as the urban unrest that resulted in the formation of the settlement and the later (political) promises made by state actors align with material components such as the electricity pylons erected reflecting a symbolic notion of legality as well as the soft-clay the housing constructions are built on, which prevent the planning department from legalising the land. The focus on both material and non-material components also draws on the agency different actors have over the legalisation process and how these actors fade in and out of importance over time. This agency 'distributed' among the different components (Bennett, 2005) and, as emphasised in the paper, material components such as the land, resulted in the de-territorialisation and re-territorialisation of the assemblage or, in other words, a new formulation of the assemblage (DeLanda, 2006).

Policy Brief: Linking theory with practice

Hatcher, C. & Balybaeva, A. (2013) Simplifying the propiska: Realising the benefits of internal migration, *Evidence for Policy Series*, Regional Edition Central Asia, No. 8, Bishkek, NCCR North South.

This policy brief aims to challenge perceptions of internal migration common in Bishkek by highlighting its 'positive role' in relation to the country's wider economic growth. While the *propiska* does not directly restrict internal migration, it does create problems for internal migrants upon moving to the city and especially those who rent a property or live in one of the city's illegal settlements. The policy brief therefore highlights the benefits of a simplified passport registration system in providing useful statistical data for the government to use for budgetary purposes and ensuring internal migrants have easy access to public services in the city. In order to simplify the passport registration system, three key recommendations are suggested: 1. Provide a means of allowing tenants to register without the consent of the property owner and for residents of illegal settlements to register at the address of the local authority. 2. Harmonise conflicting legislation in order to inhibit potential areas of

corruption. This draws on the wider policy outlook discussed above. 3. Implement an electronic registration system to assist in maintaining an accurate and reliable data set for the government that also makes registration easier for internal migrants. The publication (published in Russian and English) was distributed to the policy community in Bishkek in 2012 including local and national non-governmental organisations working in the city and central government officials.

6. Conclusion and outlook

This section emphasises the importance of legal geography as a tool for examining productions of law and space and outlines four aspects of how this study contributes to these debates. These contributions aim to expand both the geographical and theoretical extent of legal geography and expand on studies investigating the relation between law and the city. Following this, a limitation of the research in relation to the labelling of Bishkek as 'post-socialist' is discussed. This section concludes by offering pathways for future research.

6.1 Expanding on law and space

This thesis set out to explore how the overlapping and interconnected processes of law and space unfold in the post-socialist city of Bishkek, Kyrgyzstan. The study sought to understand how legal space is produced in the post-socialist city as a means of merging the epistemologically separate disciplines of legal studies and geography. The 'inter-disciplinary project' of legal geography (Delaney, 2010), together with concepts in urban theory, legal anthropology, and post-socialist studies, served as a useful analytical frame for examining legal-spatial processes unfolding in the city of Bishkek. Legal geography has usefully raised understandings of law as dependent on spatial rhetoric (Delaney, 2003) through the construction of boundaries that separate and create 'otherings' (Blandly and Sibley, 2010). This boundary production can marginalise certain social groups while benefitting others. Moreover, legal geography demonstrates how law serves as an ostensible value-free and universalising 'tool' to appropriate space (Blomley, 2008). Thus, studies on law and space illustrate how spatial definitions – such as the state, property and internal migration, examined in this thesis – are also inherently legal definitions or, in other words, how law and space mutually depend on each other.

I wish to outline four key contributions this study makes to legal geography and more specifically on the relation between law and the city. First, this thesis analyses the relation between law and space through an examination of the case study city, Bishkek. This responds to a call in legal geography to examine legal and spatial processes in a context outside of urban spaces of the global North, recognising its hitherto limited geographic range. Expanding on the spaces of legal geography prompts the incorporation of

less theoretically developed topics of discussion into the field of legal geography such as 'illegality', explored in this thesis by following the legalisation of a 'squatter' settlement on the outskirts of Bishkek (see also Fernandes and Varley, 1998; Datta, 2012). Moreover, expanding legal geography's area of study develops theoretical knowledge on existing topics discussed in legal geography such as mobility (Blomley, 2011) and urban property (Blomley, 2004) as developed in this study by examining the regulation of internal migration and rental property in Bishkek. Expanding on the geographical extent of legal geography's empirical expertise also, in turn, incorporates new concepts into studies on law and space developed through other disciplinary perspectives. Urban theory, legal anthropology, and post-socialist studies collectively formed a more robust framework for analysing processes of law and space and Bishkek through concepts such as comparative urbanism, legal pluralism, and 'domestication' of policies.

Second, this thesis argues that legal geography needs to pay attention to time and temporality in order to strengthen existing claims that emphasise the processes and performativity of legal space (Delaney, 2010; Blomley, 2013; Braverman et al., 2014). This is not to separate time from space, but rather to acknowledge the inseparability of the two (Massey, 1992). This argument joins a more established debate in geography (Massey, 2005; Schwanen and Kwan, 2012; Rogaly and Thieme, 2012) and an emerging topic in legal geography that attends to the mobile, liminal and fluid character of legal spaces that operate irrespective of official changes in the law (Benda-Beckmann and Benda-Beckmann, 2014; Valverde, 2014). Bringing in time to studies on law and space emphasises the importance of historical trajectories that produce mobile, overlapping and contradictory legal spaces (Santos, 2002). This is especially important for examining legal space in transitional contexts, not just from 'socialism' to 'post-socialism' or 'illegal' to 'legal', as demonstrated in this thesis, but also, for example, from 'conflict' to 'peace', 'colonialism' to 'post-colonialism,' as well as examining how these transitions link with perhaps more ephemeral transitions, notably the neoliberalisation of urban space and how legal frameworks are appropriated to structure this process together with how they are contested (Barkan, 2011). Moreover, an emphasis on the non-linear movement of time disrupts such labels that presume a movement from one period to another by revealing how the 'actually existing' nature of such categories represents mutated, assembled and hybrid forms (c.f. Brenner and Theodore, 2002; Hirt et al., 2013). This 'twisting' of binary labels (Humphrey, 2002; Delaney, 2010) emphasises the interstitial nature of legal space falling between hegemonic binary orderings. Thus, while the 'squatter' settlement in Bishkek was classified as 'illegal', unpacking this category by examining the settlements relationship with the state destabilised its 'illegal' label to reveal a more complicated identity.

Moreover, the labelling of the registration system (*propiska*) in Bishkek as 'Soviet', especially by organisations and individuals advocating its abolition, stand in contrast to everyday practices that seemingly work towards a capitalist agenda (c.f. Golubchikov et al., 2013). These everyday practices, operating under the guise of a Soviet 'remnant', instead relate to new meanings of property established through neoliberal policies that create contemporary (il)legal-spaces of inequality in the post-socialist city. It is this combination of representations and everyday practice (Lefebvre, 1991) that creates the hybrid spatialites of transition.

Third, by focussing on time and temporality, static and fixed understandings of law and space are unpacked to reveal the different actors that come and go in productions of legal space. Developing a finer-grained understanding of law making destabilises traditional assumptions that equate legality to the state by drawing on the agency of non-state actors and how they appropriate practices of law making together with how the state engages with aspects of illegality (Ghertner, 2008; Datta, 2012). This goes beyond examining notions of legal pluralism as representing 'state' and 'non-state' to instead highlight how 'state' law making practices are internally plural, contradictory and open to interpretation (Santos, 2002). Moreover, examining the processual aspects of (state) law draws attention to the non-human agents that play a role in legal production. This was explored in Bishkek by examining the soft clay qualities of the land in relation to the 'illegal' settlement and its role in prolonging the legalisation process. This examination of law's materialities joins other studies that, for example, investigate olive trees mediating and reinforcing the conflict between Israelis and Palestinians (Braverman, 2009) and how paper clips and folders in the *Conseil d'Etat* in Paris become embedded in processes of legal reasoning (Latour, 2010). Examining the materiality of law draws attention to the networks that emerge in law making practices, especially between non-human and human agents and how agency becomes distributed (Bennett, 2015) among different actants that enter and leave such processes at different points and times.

Fourth and finally, the study combines a doctrinal approach to analysing law and ethnographic modes of inquiry in order to develop a 'mixed method' methodology (Nightingale, 2003). A combination of examining technicalities of the law with ethnographic approaches (Riles, 2005) offers a broader, although still partial, research narrative for explaining and understanding productions of urban space. This mixed method approach relies on the researcher being both simultaneously 'inside' and 'outside' the law as doctrinal analyses are placed alongside socio-legal, and legal-geographic, ethnographic approaches (Valverde, 2009, 153). Thus, legal space is examined not just through social relations of power, most

prominent in legal geography and socio-legal studies, but also by understanding how knowledges and power are produced and reproduced through these legal technicalities (Riles, 2005; Valverde, 2009). Understanding legal technicalities and mixing this analysis with an ethnographic approach develops a more in depth knowledge of how the law, and different interpretations and enactments of the law, can produce marginal spaces in the city. Moreover, a technical understanding of present and past legislation can also potentially offer a more substantial and localised solution to resolving such problems of marginalisation. Examining the ongoing exclusion of tenants from the registration process (*propiska*) in Bishkek revealed that this was based on understandings of legislation that are now out of date, yet played a much more important role during the housing privatisation era of the early 1990s.

6.2 Whither post-socialism?

The labelling of Bishkek as 'post-socialist' served as both a descriptive purpose to highlight Kyrgyzstan's historical attachment to the former USSR and, also, as a theoretical entry-point into post-socialist studies. As Humphrey (2002, 12) writes, "while 'postsocialism' is certainly a construct of the academy, it is not ours alone, and it does correspond to certain historical conditions out there." The theoretical debates surrounding post-socialism, particularly from an ethnographic perspective, emphasise how 'change' from one period to another is hybrid and partial reflecting recombinant (Stark, 1996) and 'fuzzy' (Verdery, 1999) forms as well as aspects that may appear 'socialist' yet are reoriented towards capitalist meanings (Golubchikov et al., 2013). This thesis set out to explore Soviet law and legal practices developed and 'mutated' as they met post-socialist conditions (Golubchikov and Phelps, 2011).

The 'legal' shifts evident in the transition from socialism to post-socialism revealed the 'ghost jurisdictions' (Valverde, 2012) of the past as well as the fading out of legislation and contradictions with attitudes towards legislation. Exploring these legal shifts from socialism to post-socialism offered explanatory meanings behind the enactments of certain pieces of legislation as well as the attitudes of Bishkek urbanites towards institutional regulatory structures regarding migration and property relations. Thus, individuals in post-socialist settings are making everyday legal decisions and forming legal understandings over a time space that includes socialist and post-socialist reference points (Humphrey, 2002).

During the research, however, it became evident that there was a limitation to using 'post-socialism' as an analytical category in exploring

productions of legal space in Bishkek. As Humphrey (2002, 13) notes, "many younger people across a wide swathe of the region are already beginning to reject the term, which can be seen as constricting, even insulting, label, something imposed from the outside." This was evident in Bishkek. The Soviet period was a not a reference point for many of the younger people in the city. Moreover, examining the legalisation process of a 'squatter' settlement on the edge of the city highlighted how other time 'events' became more important for the research and for the individuals interviewed. In Bishkek, notably the 2005 Tulip Revolution, and the unrest in 2010 also became important time frames. This is not, however, to deny how these events unfolded under conditions developed in a 'post-socialist' Bishkek, but rather to emphasise that 'post-socialism' needs to be examined in relation to other time periods and events that shape productions of legal space as well as individuals' everyday lives. Temporalities and the transitions of legal space are therefore nested and overlapping, reflecting the interlegality – the alternatives, conflicts, and superimposed nature - of legal-space. This is evident in how the legalisation of the 'squatter' settlement on the edge of Bishkek was embedded in the wider transition from socialism to post-socialism as well as from urban conflict to peace during following the 2005 Tulip Revolution. Legalisation of a 'squatter' settlement is therefore embedded within 'post-socialist' processes of land privatisation together with the demand for land and subsequent legalisation of other settlements following the Revolution. These transitions, far from distinct, interact and merge with each other to illustrate a complicated story of transition.

Critically evaluating the value of 'post-socialism' for research in Bishkek and other 'post-socialist' cities encourages comparative analyses beyond traditional groupings, such as the 'post-colonial' and the global South and global North (Robinson, 2006; Roy, 2011). Instead, discussions are established beyond analytical divides to offer a more 'universal' approach to theory building. Moreover, critically reflecting on the term 'post-socialism' brings a city like Bishkek, peripheral in both productions of knowledge on post-socialist cities, and especially, urban and legal-geographic theory more broadly, into theoretical debates, for example, on privatisation and the increasing neoliberalisation of urban space (c.f. Brenner and Schmid, 2011), 'squatter' or 'slum' settlements (c.f van Gelder, 2010; Arabindoo, 2011; Datta, 2012) and property (c.f. Blomley, 2004; Gilbert, 2008). Rather than being a mere comparative descriptor to other cities, a city such as Bishkek is instead incorporated into universalising theories on post-socialism, legal geography, and urban change.

6.3 Future research directions: law, property, and conflict

Within the field of law and space in urban contexts, this thesis draws considerably on relations of property and legal aspects of 'squatter' settlements. It became evident how property relations form an important component of studies on law and the city (Blomley, 2004). Property was appropriated by international organisations to form a key aspect of the economic and political transition from 'socialism' to 'post-socialism' and recent legislative enactments continue to maintain a way of seeing property that is based on individual responsibility and the continual rolling-back of the state as a housing provider. From a more individual level, property ownership became embedded with notions of urban citizenship, while a demand for land during the unrest of 2005 and 2010 was also a demanding a 'right' to the city (Lefebvre, 1991; Marcuse, 2009).

Examining these demands of land and the right to construct housing during political ruptures within the city, as well as Kyrgyzstan more broadly, requires more thought and consideration. Legal geography offers a useful analytical frame for exploring questions on law, property and conflict. There is a close relationship between (suspensions of) law through unrest, political demands to the city, and claims over property that need examining further within the framework of legal geography. The 2010 unrest in Bishkek spread to other areas of the country and in June 2010, the city of Osh, the second largest city by population and regarded as the 'capital' of the South, erupted in inter-ethnic violence between the city's ethnic Uzbek and Kyrgyz populations. Within this context, I will explore how property relations are incorporated into urban unrest and how the material reconstruction of property can serve as a tool for 'peace building' in the city for my post-doctoral research (from January 2015). This post-doctoral study will continue with the examination of themes discussed in this thesis, especially on material forms of law and the importance of examining legal space temporally through the transition from 'conflict' to 'peace'.

Whether examining legal geographies in post-socialist Bishkek, post-conflict Osh, or any other setting, it is important to emphasise the socially constituted nature of law and space (Delaney, 2014). The enactment of law is not a neutral and value-free enactment over a spatial *tabula rasa*. Law and space are interweaving, overlapping and mutually dependent while being constitutive of each other and wider historical, social, economic and political trajectories. The implementation of law is therefore not a panacea to urban problems (Fernandes and Varley, 1998) without understanding the wider framework in which they are produced, enacted, and performed.

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PART II: Scientific Papers and Policy Brief

Paper I:
Mutations of Soviet law

Hatcher, C. & Thieme, S. Institutional Transition: internal migration, the *propiska*, and post-socialist urban change in Bishkek, Kyrgyzstan.

Accepted: Urban Studies

Institutional transition: Internal migration, the *propiska*, and post-socialist urban change in Bishkek, Kyrgyzstan

Since the collapse of the Soviet Union in the early 1990s, there has been remarkable enthusiasm for theorising how transitional processes have unfolded in post-socialist cities. In seeking to extend literature that uses the post-socialist condition as a tool for theory building, we draw attention to the ongoing processes of institutional change in post-socialist cities. In doing so, we reject a 'top-down' perspective and examine how these institutional transitions are shaped through processes of 'domestication', negotiation and contestation between different interest groups in the city. We develop our argument, by drawing attention to the local political debates surrounding the *propiska* in Bishkek, Kyrgyzstan. The *propiska* developed throughout the Soviet Union to control internal migration and is still used today in a less restrictive form. By discussing our case study, we hope to foster attention towards the ongoing contested processes of institutional transition in post-socialist cities.

Key words: *Bishkek, governance, institution, internal migration, post-socialist legacy*

Introduction

An active research community continues to theorise changes that have been occurring in post-socialist cities since the dissolution of the Soviet Union and the destruction of the Berlin Wall (Andrusz et al., 1996; Darieva et al., 2012; Gentile et al., 2012; Golubchikov et al., 2014; Grubbauer and Kusiak, 2012; Tsenkova and Nedović-Budić, 2006). Within this literature, an important focus remains on the tensions between Soviet 'legacies' or the 'frozen mirrors of socialism' (Sýkora and Bouzarovski, 2012: 45) and post-socialist changes that produce contemporary forms of urban inequality.

Studies theorising the transformation of urban space in post-socialist contexts emphasise the complexities of these changes. Post-socialist transformation is theorised as multiple and operating at different scales and temporalities, from the institutional level to the practices of individuals, firms and organisations and reconfigurations of the built environment (Sýkora and Bouzarovski, 2012). The post-socialist city is characterised as continually unfolding under processes of 'heteropolitanisation' that reflect both the mixture of path-dependencies and transition-induced factors (Gentile et al., 2012). It is this mixing of the old and new that Golubchikov et al. (2014) characterise as the 'hybrid spatialities' of transition, whereby so-called 'legacies' of socialism have become incorporated and hybridised within the logics of capitalism.

In building on this literature, we aim to highlight the mutual and interdependent relation between urban space and institutions in post-socialist cities. As Taşan-Kok (2006: 51) notes, the realignment of institutional structures towards free market mechanisms and democratic structures 'have had pronounced spatial consequences in post-socialist cities'. As well as noting these spatial changes, we also highlight the reciprocity of this relationship by reflecting on how institutions adapt to wider transformations in the post-socialist city and, in the context of our case study, as a result of changes in property relations following privatisation programmes in the 1990s (Marcuse, 2011). In examining this relation between urban space and the institution, we aim to foreground new forms of inequalities emerging in the post-socialist city.

In understanding the mutual relation between urban space and the institution, we draw on a broader and localised definition of the 'institution' beyond the short term political and economic restructuring evident, for example, in the structural adjustment programmes of the early 1990s, to include a combination of rules, laws, internal procedures and informal values and norms (North, 1990). In doing so, we argue that not only is institutional transition ongoing in the post-socialist city (see Haase et al., 2011; Sýkora and Bouzarovski, 2012; Cities After Transition (http://citiesaftertransition.webnode.cz/); c.f. Leetmaa et al., 2009 on suburbanisation), but also how institutional transition is subject to multiple framings by different interest groups.

In conceptualising institutional change in the context of post-socialist cities, we draw on our case study of the *propiska*.[56] The *propiska* was an institutional mechanism first introduced in the Soviet Union in 1932 to regulate internal migration. As with other post-socialist countries – with Russia being a more popular research example (Höjdestrand, 2003; Light, 2012; Schaible, 2001) – internal migration continues to be monitored by an administrative system of registration (*registratsiya*) that is still commonly referred to by its Soviet name, the *propiska*.

Institutional changes of the *propiska* within the context of urban transformation are explored in the city of Bishkek, the capital of Kyrgyzstan. The registration system, as was also the case in the Soviet period, is important in the everyday life of the Kyrgyz citizen and is

[56] All foreign terms are in Russian unless stated otherwise.

particularly relevant in Bishkek where the majority of internal migrants move to in search of work, to study, or a combination of both. A registered status in Bishkek is required to officially access basic state services (health care, education, pensions and child support), to vote and is sometimes a requirement for public-sector jobs, while more recently it has also become a pre-requisite for taking out bank loans and starting a business. Despite these encompassing aspects, approximately 20 per cent of Bishkek's population is estimated to have 'unregistered' status in the city which, for some, restricts their right to access basic urban services, to vote, obtain credit and formally set up a business (Azimov and Azimov, 2009).

In analysing the *propiska* system in relation to the wider dynamics of post-socialist urban change in Bishkek we ask the following questions:

- How are institutional changes in relation to internal migration enacted in legislation and how are these changes perceived, negotiated and 'domesticated' by different actors in Bishkek?
- How are these institutional changes nested in wider transformations unfolding in the post-socialist city, particularly in relation to privatisation of property, and how does this relate to the marginalisation of certain groups?

In answering these questions we draw attention to Bishkek, a city that has remained relatively underexplored in studies on post-socialism save for some important research on migration and the related growth of informal settlements (Flynn and Kosmarskaya, 2012; Hatcher, 2015; Sanghera et al., 2012), on emerging urban youth identity (Ibold, 2010; Schroeder, 2010), and housing policies in relation to ongoing privatisation (Hatcher, forthcoming). While a small body of literature is emerging on other cities in Central Asia (Alexander et al., 2007; Darieva et al., 2012; Gentile and Tammaru, 2006), studies on post-socialist cities tend to remain geographically focused on Eastern and Central Europe. Thus, we seek to foreground Bishkek in order to expand on the empirical bias evident in studies on post-socialist cities.

The paper is structured as follows. In the next section, we discuss how theories on post-socialist change have questioned universalising principles (Hörschelmann and Stenning, 2008) and instead note how macro-level policies are negotiated, 'domesticated' and redefined at the local level

(Smith and Rochovská, 2007; Stenning et al., 2010). We note how the unfolding of these processes at the local level provides a useful conceptual starting point for understanding the wider dynamics of institutional change in post-socialist cities. After discussing our methodology, we introduce the *propiska* and empirical material from the first author's field research in Bishkek. First, we examine the regulation of internal migration from a historical perspective, second, the power struggles between different urban actors in framing institutional change and third, how spatial changes in the post-socialist city, namely related to property, reshape the role of the *propiska* towards a capitalist logic.

Institutional change in the post-socialist city

With the accession in 2004 of seven former 'Eastern Bloc' countries to the European Union, scholars and policy-makers have tentatively questioned addressing the issues that these countries are facing 'after the transition' (Cities After Transition (http://citiesaftertransition.webnode.cz/); Leetmaa et al., 2009; Stenning et al., 2010). As an interesting contribution to these debates, studies on post-socialist cities retain the importance of using 'post-socialism' as a lens of inquiry but expand on the meanings behind change. Sýkora and Bouzarovski (2012: 45) switch between 'transition' and 'transformation' in their proposed framework for theorising post-socialist urban change. While transition is typically 'associated with the neoliberal agenda, based on the radical replacement of the basic political and economic institutions of socialism with democratic and market arrangements', transformation, on the other hand, highlights the 'hybrid nature of post-communist realities with respect to the recombination of socialist and capitalist elements'. Unlike earlier teleological approaches towards transition, transformation does not take place in a vacuum or on a tabula rasa, rather it is contextual and reliant on inherited structures (Stark and Bruszt, 2001). It is the blending of these inherited structures with neoliberal doctrine that leads to the workings of such socialist legacies playing a different and contemporary role in the post-socialist setting (Golubchikov and Phelps, 2011).

Studies on urban change have therefore highlighted an internalisation of a neoliberal doctrine that combines with persistent socialist elements (Herrschel, 2007: 440). Accordingly, '[t]he narratives and legacies of the past – including those that hark back to the era before socialism –

articulate with contemporary processes of globalization and neoliberalization' (Stenning et al., 2010: 6). Socialist structures remain embedded in government apparatus that in other aspects are 'progressing' under the principles of free-market capitalism, attitudes continue to prevail that could be perceived as 'Soviet', state structures change while attitudes remain and some aspects are unnoticed or considered neither socialist nor post-socialist but just there as a backdrop to everyday life.

Recent debates on conceptualising post-socialist change in geography (Hörschelmann and Stenning, 2008; Smith and Rochovská, 2007; Stenning et al., 2010) have drawn on literature in anthropology (Burawoy and Verdery, 1999; Hann et al., 2002) to understand how macro level policies interact with everyday experiences (Creed, 1999; Stenning et al., 2010; Verdery, 1996). The large scale processes of transition are therefore responded to and (re)produced by specific actors in specific locations (Hörschelmann and Stenning, 2008). A research agenda has developed that realises the critical importance of understanding how broad, macro-economic policies affect people that live through and within them (Stenning, 2000). Stenning et al. (2010) emphasise that not only are individuals subject to these policies, but they also play an active role in negotiating, contesting and constructing these, while adapting them to their personal circumstances. Thus, the neoliberal economic plans of the post-socialist era are 'domesticated' and exist through the practices of everyday life (Stenning et al., 2010), just like the policies implemented during the socialist era varied locally as they were negotiated, constituted and made possible through everyday practices (Creed 1999).

A focus on urban change in post-socialist contexts examines unfolding transformations at the local level and thus, offers a more nuanced perspective on how policies are embedded within power constellations. Reading post-socialism through the 'urban' magnifies the 'recombinant' (Stark, 1996) or 'fuzzy' (Verdery, 1999) nature of urban policies as they merge with the 'continuities' of socialism and the 'changes' of neoliberalism. As Golubchikov and Phelps (2011: 428) note in their analysis on the broader institutional context of post-socialist urbanisation:

> 'If we unpack the local 'consensuses' of post-socialist societies for scrutiny, we will find the contentious processes of institutional configurations and reconfigurations with old and new, socialist, pre-socialist and post-socialist elements co-existing, interplaying and conflicting with each other.'

Soviet institutions have mutated to incorporate neoliberal characteristics while neoliberal policies are manipulated and shaped to 'fit' with prevailing 'legacies'. Understanding this connection between 'legacy', and 'change' is dependent on who is involved in the implementation of such urban policies and for what reasons and how they go about doing this.

Following a brief discussion of our methodology, the next section outlines institutional change in relation to the *propiska* by detailing its historical development, the actors involved in proposing reform and how this institutional change is nested within a broader frame of post-socialist change in the city.

Methodology

The data collection for this paper was carried out by the first author between 2011 and 2013. Semi-structured interviews were held with a range of different individuals who have varying involvement in the *propiska* system. This included internal migrants, government officials, civil servants working at local registration offices, representatives of non-governmental organisations (NGOs) and activists who were proposing reforms to change the current system (n = 53).

Registration with the local authorities in Bishkek can be a time consuming process requiring the collection of certified documents from various agencies in the city and from the migrant's home town or village. The first author therefore 'shadowed' applicants that were in the process of registering with the local authorities in Bishkek. Shadowing applicants through the *propiska* system ensured that we developed a full understanding of the official practices of registration together with the unofficial aspects and especially those characteristics that were difficult to define as one or the other. This involved queuing with the applicants at passport and housing offices as they acquired documents, visiting individuals and organisations to secure a 'fake' address required to register, obtaining seals from notaries and depositing payments at banks. The first author also attended various roundtable discussions on proposing reforms to the existing system of registration as a non-participant observer. Interviews and discussions during the shadowing process were mainly in Russian or Kyrgyz and translated into English with the assistance of a translator.

Secondary sources were analysed by the first author, including legal and archival documents and newspapers. This involved a legal analysis of relevant pieces of legislation concerning the *propiska* system. An online legal database (TOKTOM, http://www.toktom.kg/) was used to access Kyrgyz legislation and to follow the enactment and repeal procedures of different laws. Archival research was used largely for accessing local public information newspaper articles on the *propiska,* which reported on the relevant legal changes enacted in Kyrgyzstan between 1940 and 1990.

The *propiska* and post-socialist urban change

> "Kyrgyzstan has been independent for nearly 20 years – and we still have this Soviet system!" (Interview with local NGO director, 2011)

We can perhaps acknowledge an era of 'post-institutional transition' (Leetmaa et al., 2009) or a time period of 'after-institutional-transition' (Sýkora and Bouzarovski, 2012) in post-socialist cities if we take institutional transition to mean the short-term political and economic reforms initiated by 'shock therapy' policies of structural adjustment programmes in the 1990s that saw, among other aspects, the mass privatisation of housing. In this paper, we take Douglass North's (1990: 3) broader definition of institutions as 'the "rules of the game", consisting of both the formal legal rules and the informal social norms that govern individual behaviour and structure social interactions.' In developing a local or 'domesticated' understanding of institutional transition, we take institutions to therefore mean a combination of formal rules, laws, contracts, internal procedures and informal values, morals and norms. Writing from an urban perspective, Amin and Thrift (2002: 72) note that '[t]he rich and varied ecology of life in cities presses for institutionalisation, through the opportunity for collective organisation offered by scale and density, but also the need for orientation and rules in a bewilderingly complex and varied environment.' Institutions therefore develop to control societal and urban complexity and are formed and re-formed as a set of practices that are fragmentary, non-coordinated and contested through local-level power struggles (Hansen and Stepputat, 2001). Cities are thus especially dense institutional assemblages that encompass the material and non-material as evident in the physical structure of institutions such as hospitals, schools and local government offices as well as the ideas and

discourse that co-produce such institutions, together with the role of various individuals and groups.

Taking this broader definition, we first analyse institutional change and proposed change in relation to the *propiska* by drawing on its different framings stretching across historical and contemporary legal definitions and understandings of local interest groups, international organisations and residents of the city. In the next section we discuss the introduction of the *propiska* throughout the Soviet Union from the 1930s and, more specifically, in Bishkek.[57] In doing so, we draw on both historical and contemporary literature on the development of the *propiska* and begin to introduce empirical findings from archival and legal research that focus on this development in Kyrgyzstan. This is followed by an analysis of how the *propiska* is 'domesticated' in everyday administrative processes and in terms of proposing reform. The final section challenges some of these dominant representations of the *propiska* to understand the 'hybrid spatialities' (Golubchikov et al., 2014) of institutional change unfolding in post-socialist cities. We explore these 'hybrid spatialities' by linking changes in the *propiska* to outcomes of property privatisation programmes introduced during Kyrgyzstan's early independence years.

Kyrgyzstan and the Soviet propiska*: A historical perspective*

The registration system authorised the holder of a *propiska* to work in a particular town and reside at a specified address (Light, 2012).[58] Reasons for the *propiska* system's implementation during Stalin's era vary. According to legal scholar, Damian Schaible (2001), the system was initially implemented to 'tie' collective farm workers and other rural dwellers to the land and restrict mass migration to cities. Unlike urban areas, passportisation was not extended to individuals living in rural areas until 1974, therefore restricting their access to 'passportised regime areas' – notably cities, industrial centres outside of cities, large towns and frontier zones (Toktosunov, 1975). This not only restricted the physical movement of rural dwellers but also the possibility of finding a job and living in the city where individuals were comparatively better off, especially during the

[57] From 1926 until Kyrgyzstan's independence in 1991, Bishkek was known as Frunze. The propiska system was enacted in Frunze in 1939 by a decree of the Executive Committee of the Frunze City Soviet of the Kyrgyz Soviet Socialist Republic, 29 April 1939.

[58] As the Organisation for Security and Co-operation in Europe (OSCE) (2009: 5) notes, in many countries, "citizens are required to register their place of residence with the relevant authorities, who use the system for the planning and delivery of state services and to contact people."

widespread famines of the 1930s (Matthews, 1993). Kessler (2001: 478) also argues that the system was introduced as an 'instrument of repression and police control and, in the short run, more crudely as a purging tool' as *kulaks* and other individuals that fell outside the socialist ideal were cleansed from cities and other regime areas.[59] The *propiska* system then later developed to serve as an administrative tool throughout the Soviet Union, whereby the payment of pensions and social security benefits as well as access to local *polyclinics* (health centres) were all dependent on the individual's registered address.

Larger Soviet cities such as Moscow and Saint Petersburg as well as capitals of the republics, such as Bishkek, often implemented their own regulations in relation to the *propiska* thereby allowing them to expel people from the city who 'avoided socially useful work', whose behaviour was 'unworthy', and who 'infringed the rules of the socialist community' (Matthews, 1993: 7; Sovetskaya Kirgizia, 1948). This created what Höjdestrand (2003) defines as a 'territorial stratification' between those living in privileged city regions and others living outside of these regime areas often in rural areas of the country. As one local Bishkek newspaper noted, the 'city propiska' became a 'cherished stamp' in one's passport (Vecherniy Frunze, 1990). Residence in the city was regarded as a privilege whereby urban living was 'seen as the highest form of socialist life' and the town was 'the best place where socialist consciousness [could] develop the necessary environment for achieving the perfection of a socialist society' (French and Hamilton, 1979: 7).

In the early 1990s, just before Kyrgyzstan's independence and in the era of Gorbachev's *perestroika* (restructuring) reforms, attitudes towards the *propiska* began to relax in Bishkek, yet stringent restrictions on internal migrants' rights remained in place. Owing to a labour and housing shortage in the city, directors of enterprises began to hire workers who were not officially registered in Bishkek. Nonetheless, as one local newspaper noted, 'such families live without any rights at relatives, friends, temporary houses … These people have many problems: they cannot get sugar ration tickets nor be admitted to a kindergarten or hospital' (Vecherniy Frunze, 1990). It was not until after the dissolution of the Soviet Union that the restrictive nature of the *propiska* was – officially, at least – gradually reduced, giving citizens the right to choose their place of residence.

[59] The meaning of kulak is transient. Kulaks were broadly identified as wealthy peasants who emerged after the emancipation of the serfs and then later resisted Stalin's campaign of farming collectivisation.

These institutional changes were often implemented reluctantly by municipalities. In larger cities such as Moscow many more-established residents were unhappy with the increasing number of migrants moving to the city, especially from Central Asian countries such as Kyrgyzstan and Tajikistan (Bovt, 2013). Similar sentiments over 'protecting' the city exist in Bishkek, although this is largely in relation to internal migrants moving to the city rather than international migrants, as is the case with Russian cities. The (internal) migrant population of Bishkek has increased most noticeably since the collapse of the Soviet Union. Between 1989 and 1999 the city's population grew from 619,900 to 762,300 and to 835,300 in 2009 (National Statistical Committee of the Kyrgyz Republic, 2009) at a time when the largely urban, ethnic Russian population were leaving the country to pursue citizenship and perceived better opportunities in Russia.[60] This led to what established Bishkek residents describe as the 'ruralisation' of Bishkek, especially pointing to the urban sprawl on the outskirts of the city that saw the development of *novostroikas* (literally meaning 'new constructions'). *Novostroikas* are informal settlements that emerged in the late 1980s when the Soviet administration, as a means of tackling the housing shortage in the city, began to distribute land plots to internal migrants and allow them to construct their own housing. Such housing shortages were systemic throughout the Soviet Union at the time (Stanilov, 2007), and especially in Central Asian cities where there were higher levels of overcrowding than in other Soviet cities (Morton and Stuart, 1984).[61] This initial state-sanctioned urban sprawl was subsequently followed by two waves of 'illegal' land squatting first in the early 1990s after the collapse of the Soviet Union and second in the aftermath of the Tulip Revolution in 2005.

Established ethnic Kyrgyz and Russian residents living in Bishkek collectively disassociate themselves from those individuals who have recently moved to the city from rural areas. Bishkek residents tend to perceive these rural dwellers as uncultured and unaccustomed to urban living (see Schroeder, 2010), while tensions exist in their 'illegal' taking of land that belongs to the city's Land Redistribution Fund; land that was reserved for Bishkek residents during the privatisation process. In linking this labelling of 'illegality' to the propiska, one government official noted:

[60] Although these are official statistics and unlikely to match the reality, they serve as an indicator of the increase of the city's population, and specifically its population originating from rural areas, as the typically 'urban' ethnic Russian population were leaving Kyrgyzstan.

[61] Out of a study of 28 cities conducted in 1979, three Central Asian cities had the highest levels of overcrowding (Bishkek, Tashkent and Dushanbe) with per capita living space of 6.9, 6.8 and 6.6 m^2 respectively. By comparison, Moscow's average per capita living space was 11.2 m^2 (Morton and Stuart, 1984).

> All respectable citizens have a *propiska*. This problem [with the *propiska*] is mainly an issue for residents living in *novostroikas*, but most *novostroikas* are illegal. People just seized the lands … it is not their land … [and so] respectable citizens do not have such problems with the *propiska*.

It was also noted how the internal migrants had, as part of the privatisation process, typically received land from the state in rural areas but as one respondent noted: 'they're just too lazy to work on the land, so they come and earn easy money in the city's *bazaar* [market]'. Yet reportedly, the distribution of this agricultural land by local village governments (*ayil okmotu* in Kyrgyz) has been inequitable and lacked transparency while a significant proportion is classified as severely degraded, suffering from erosion and requiring substantial irrigation investment (USAID, 2011), all factors that have contributed to processes of migration to Bishkek, and beyond to Russia and Kazakhstan.

Domesticating the Bishkek propiska *and framing its reform*

Institutional changes and how they are experienced differently – or 'domesticated' as they are lived, negotiated and resisted – by different individuals (Stenning et al., 2010) highlights the need to examine the *propiska* through the everyday, mundane practices of those subject to it. In doing so, the 'top-down' perspective to transition is replaced with how institutions are produced through networks of individuals, policies and practices operating at different scales. In this section, we introduce formal changes to the *propiska* enacted through legislation, how these formal rules are 'domesticated', and how possible future changes are envisaged through the different actors proposing reform or, conversely, in maintaining the existing system. We do this in order to demonstrate how institutional transition is still ongoing and also how such change is negotiated or 'domesticated' by different urban groups and identities.

The restrictive nature of the *propiska* system was formally altered through Kyrgyzstan's newly adopted constitution first drafted in 1993. This incorporated international human rights standards that entitled all Kyrgyz citizens to the 'liberty of movement, freedom to choose his [sic] destination and residence through the territory of the Kyrgyz Republic' (Article 14 of Constitution of the Kyrgyz Republic, 5 May 1993). The subsequent Law on Internal Migration (IM, 30 July 2002, N. 133), enacted

by a presidential decree in 2002, established more specific rights and duties for internal migrants. Depending on their intended length of stay, a migrant registers temporarily (usually for a six-month period) or permanently (Article 12, Law on IM, 30 July 2002, N. 133). An applicant who wishes to obtain a Bishkek *propiska* must provide, among other identification documents, proof of where they are staying temporarily or moving to permanently (Article 16, Law on IM, 30 July 2002, N. 133). Proof of residence is usually met by written consent of a willing property owner (often a family member, or the applicant themselves if they own the property). A tenant must enter into a written tenancy agreement with the landlord (Article 16, Law on IM, 30 July 2002, N. 133). The property owner giving permission to register must also attend one of the registration offices with the applicant and provide their own passport. The address is then recorded on the applicant's identification card or, if the applicant is only staying temporarily, on an officially stamped document.

Respondents shadowed during the registration process in Bishkek highlighted the individual nature of obtaining necessary documents, which was often dependent on relationships established with employees of registration centres. One respondent described an exchange with a housing official in relation to a certificate she required to register with the city's authorities:

> The woman in the [housing] office asked me: 'Is it legal or illegal?' We said, 'It's illegal.' She immediately understood and said, 'do you want me to process your documents through our accounts department? If they are processed here, one more person will be added to your utility services and you will have to pay more for water, and for some other things,' so we said, 'Let's make it illegal without processing it through the accounts department.' The woman said, 'OK, fine.'

The challenges of the *propiska* are, for some individuals, negotiable. Days before attending the housing office, the respondent noted how she had made several phone calls and visited friends and old contacts to establish who knew of an acquaintance working within the registration system. Circumventing the requirements of the *propiska* system is possible for those who can afford to pay or know the right contacts. For them, the *propiska* is seen more as a superfluous and out-dated piece of bureaucracy from the Soviet period, which is ignored or negotiated at an everyday level when the individual need arises. For others, notably poorer internal migrants from rural areas, a lack of a valid *propiska* means paying costly

bribes to school teachers, doctors and low-paid state officials in order to access urban services or obtain a 'fake' *propiska*.

Groups advocating reform of the system, typically local NGOs and activists, framed the *propiska* system as 'Soviet' and thus 'out of place' in modern Kyrgyzstan as a means to advocate a need or a reason for it to change. As a government strategy document on the *propiska* noted:

> Kyrgyzstan appears today before new global challenges … including the globalization of the economy, mass labour migration, and international terrorism. Their impact on Kyrgyzstan creates new threats. Working with them requires innovative approaches and new solutions. (SRS, 2011)

One director of an NGO stressed how the registration system was interfering with Kyrgyzstan's transition, and in particular its economic development, by creating additional hurdles required to open a business and restricting labour mobility.

The local NGO, along with other international NGOs and independent activists and some politicians also demonstrated how the current system curtailed individual liberties. One activist linked this curtailment of rights as a negative 'atavism' – a throwback – of the Soviet era:

> Why do we say that the *propiska* is a product of the Soviet time? Because during that time people used to live under the control of the government: we didn't have freedom! And why should we still continue to live in that way when we got independence a long time ago … I want to feel free myself and move from one place in Kyrgyzstan and still get free access to any social service in any place … so we should refuse this Soviet system. This system was strict and people had limited rights.

The activist linked the current registration system with what are more commonly regarded as the negative aspects of the Soviet period. The migrants we interviewed often cited the Soviet period as, on the one hand, a time when access to free healthcare and employment was guaranteed but on the other hand, when civil society movements were restricted, individualism was discouraged, and political rights were curtailed.

Others emphasised the importance of the *propiska* but noted a simplified system was needed. The *propiska* remains embedded in administrative structures, which, as one employee of a passport office noted, would cause

'frightful disorder if you were to completely do away with [it].' Rather than abolish it altogether, computerisation of the system was proposed as a means of pushing the system into the modern era. As one politician noted: 'we must move away from Soviet principles and move forward given that we live in an age of information technologies.' The registration system continues to operate today as a heavily manual mechanism with little technical input. This lack of computerisation means that all documents have to be filed in person at one of the city's three main registration centres. A lawyer seeking to simplify but maintain the system of *propiska* noted:

> If you want to change your address … you need to collect and turn in many different types of documentation, and the entire process will take at least one month. That's where the problem lies, not with the *propiska* [but with] the waiting and collecting of all the documents, that is where the headaches, discomfort and annoyances are.

Each applicant was required not only to attend a registration centre in person but also local government offices in the region where they were moving from to collect documents needed to register at their new address. This was not only time consuming but could involve an expensive trip across the country in order to return to their place of origin and collect the necessary documents.

The computerisation of the registration system was partly put into practice in January 2012 when the State Registration Service (SRS; *Gosudarstvennaya Registratsionnaya Sluzhba*), a newly established government department, assigned with the role of updating the *propiska* system and, in particular, eliminating its notoriously corrupt practices, opened a new registration centre in Bishkek (SRS, 2011). Respondents highlighted that introducing a computerised system is perceived to be the one, and often only means, of pushing the current system up to modern standards. Yet, as an employee of the new registration centre noted, the practices of the staff, including corruption, and the mechanisms of the propiska simply transfer to an electronic system.

For Bishkek old-timers (*starozhily*), control of migration and crime were commonly cited reasons for why Kyrgyzstan, and especially, Bishkek, needs to retain its current system of registration. Several respondents noted that the *propiska* was needed for safety issues in the city as 'criminal acts … were normally done by migrants' and the system of registration allowed for

easier pinpointing of criminals. The linking of criminality to internal migrants chimes with a study by Flynn et al. (2014: 1514) on nostalgic memories of Frunze and how 'long term residents, both Kyrgyz and Russian, tend to view their worsening life conditions through a prism of an invasion by migrants.'

While migration was originally restricted in the Soviet Union to serve the needs of the planned economy and avoid the 'negative aspects of capitalist migration' (Buckley, 1995), the current system of registration no longer directly restricts migration. Nevertheless, this earlier Soviet curtailment of movement is still cited by some Bishkek old-timers as a reason why the *propiska* system is needed. As the head of one parliamentary committee working on migration issues informed us: 'every person has to have one *propiska* to regulate the flow of people migrating.' There is thus a continuing perception that the registration system controls the movement of migrants to Bishkek, as was the case during the Soviet Union. Yet, as we attempt to show below, these dominant framings that focus on the 'legacy' of the *propiska*, or on its historical purpose, can obfuscate other contemporary processes of urban change that reveal new spatial inequalities.

The propiska *and post-socialist property relations in the city*

The 'legacy' of the *propiska* has become incorporated within wider neoliberal logics of institutional change in the city, especially in relation to the privatisation of property. In this final empirical section, we explore the nested relationship between the *propiska* and wider property transformations as a means to understand contemporary productions of post-socialist inequalities.

Moving to the city during the Soviet period was not an easy task. As Morton (1980: 237) writing during the Soviet period notes, '[e]very step in the process from acquiring a *propiska* to receiving comfortable housing is measurable in years of anguish, aggravation, discouragement, and resignation.' The right to live in the city required a *propiska*; yet obtaining one was dependent on receiving a property in the city, which was normally dependent on gaining employment there. Several options existed for those who wanted to move to the city from rural areas or smaller cities: if possible, live with relatives or acquaintances, gain employment with an organisation that provided housing to its employees, or sublet an

apartment. These inevitable complications led some individuals desperate to live or stay in a Soviet city to pursue fraudulent strategies such as obtaining a propiska through 'sham' marriages or by bribing officials working in the local administration offices (Buckley, 1995). As one local newspaper article noted in highlighting the crack-down on propiska fraud, individuals who had a property in Bishkek often lived with other family members but remained registered at another address in the hope that their property would soon be demolished for slum clearance purposes (Dzhunkovskii, 1982). Such slum clearances would entitle the *propiska* holder to a new home typically in one of the city's better-equipped micro-districts (*mikroraions*) located outside of Bishkek's city centre.[62]

Once registered somewhere, the property right under Soviet law, although still legally a 'tenancy', became relatively secure. As Höjdestrand (2003) notes, the municipality could not evict a tenant, even if they had failed to pay rent, unless cheaper accommodation was offered. The Soviet tenancy agreement therefore resembled a property right close to Western versions of private homeownership (Marcuse, 1996). During the privatisation era of the early 1990s, following the collapse of the Soviet Union, the important property meanings of the *propiska* crystallised as it served as documentary proof for transferring ownership of property from the state to the individual sitting tenant (see Hatcher, forthcoming). The importance of the propiska during the initial period of privatisation contrasts with the previous discussion on its framing as a 'legacy' or a 'throwback' that is holding back the economic development of Kyrgyzstan. Different representations of the *propiska* are unfolding. Although framed by groups pushing for reform as a Soviet institution, the *propiska* was appropriated as an important tool in instigating the transition towards capitalist logics in Kyrgyzstan. The *propiska* was converted into forms of individual ownership designed to kick-start a free-market economy. Rather than reading the *propiska* in a reductionist way as an 'alien' remnant of the past 'out of place' in today's new Kyrgyzstan, it is pertinent to observe what Golubchikov et al. (2014: 618) highlight are the 'hybrid spatialities' of post-socialist urban change. Through different representations and understandings, the *propiska* works as a combination of 'mutual embeddedness of the legacies of socialism and the workings of neoliberal

[62] Micro-districts became a major element of urban planning in Soviet cities from the 1950s. These neighbourhood units consisted of a group of large standardised residential buildings, with shops and services on the ground floor. The districts were built quickly and cheaply using concrete panel technology. In Bishkek, construction of these neighbourhoods first began in 1970 following the development of standardised four-, five-, and nine-storey housing designs.

capitalism' that 'jointly produce the hybrid spatialities of transition' which expose the 'root causes of uneven development.'

The initial appropriation of the *propiska* by capitalist logics, and in particular changing meanings of property, is also important for understanding how new spatial inequalities have arisen in post-socialist Bishkek. In the Soviet period the mechanism of the *propiska* restricted internal migration, yet as a local lawyer noted:

> During the Soviet period the problems that have now appeared as a result of independence did not exist. The residents of far away provinces were able to live well on their salaries … There was no need to leave or migrate from your home in search of somewhere better. The entire [*propiska*] procedure was also stricter. People simply did not try to move, so there was not a very large problem with internal migration. And in those same rural regions that people are now leaving, practically all the resources necessary to build a house and raise a family were present so people did not have to leave.

Wider processes of post-socialist transformation, and especially de-industrialisation and agricultural restructuring in rural areas following the suspension of subsidies that existed during the Soviet period and the resultant increase in the number of migrants moving to Bishkek, has re-spatialised the workings of the *propiska*. Administrative procedures for registering have remained largely unchanged yet the previous strict enforcement of protecting the city from 'capitalist expansion' is no longer relevant. This hybrid spatiality through the combination of legacy and transition equates to contemporary forms of inequality that unfold in the city.

Post-socialist inequalities embedded in the *propiska* system are structured around its ongoing procedural aspects (the process of obtaining a *propiska*) together with its 'mutation' towards new urban landscapes of property ownership. As with most post-socialist cities (Marcuse, 1996), programmes privatising state housing have created high rates of private ownership. Residents of Bishkek who lived and grew up in the city prior to the dissolution of the Soviet Union often have no problem with registering their address in the city. Those residents who received ownership of their property during the privatisation era can use their property documents to register against their address. Similarly, migrants who come from outside of Bishkek and purchase a property in the city can also register themselves

with the local authorities using their newly acquired property documents. For some migrants, however, coming from other regions (*oblasts*) purchasing a property in the city is inconceivable where the average price per square metre even outside the city centre was $700 in 2013 (Numbeo, 2013). As with other post-socialist cities, the development of the housing market has led to the increase of high-rise elite housing (*elitka*) by foreign construction companies in the city centre, while the building of affordable housing in the country has almost frozen (UNECE, 2010). Migrants often rent a property or, owing to the high cost of renting, informally 'buy' a cheaper property on an 'illegal' *novostroika* established after the political unrest of the Tulip Revolution in 2005, or alternatively purchase an 'illegal' plot of land within one of the formalised settlements.[63] Landlords often refuse, however, to register tenants as this increases their tax liability and utility expenses they are liable to pay. Moreover, the importance of the *propiska* in transferring property ownership during the privatisation period remains in the minds of property owners today who often believe that registration of a tenant could confer partial ownership to that registered tenant. The illegal status of a property in a squatter settlement also means that the 'squatter' has no official address to register against. As a result, tenants and residents living in 'illegal' squatter settlements or on 'illegal' land plots in formalised settlements on the city's periphery often experience difficulties in fulfilling the bureaucratic obstacles required to obtain the *propiska* and subsequently in accessing urban services in the city through official channels.

As Golubchikov and Phelps (2011: 429) note in echoing Burawoy and Verdery (1999), 'the internalisation of the neoliberal doctrine has been blended with the persistence of socialist elements, which may now play a very different role than in the past.' As property rights have transformed in Bishkek with the rollout of housing privatisation and consequently the transfer of ownership from the state to sitting tenants, the enduring persistence of the *propiska* regime has blended and mutated with these neoliberal logics. The registration process is now conceived through property ownership, which in turn marginalises those in the city, often migrants, who rent or live in an 'illegal' settlement or an 'illegal' plot of a formalised settlement. This institutional hybridisation of past and present has taken on a spatial formation in the city through the visible geographical distribution of illegal and formalised settlements on the outskirts and the

[63] See Hatcher (2015) on the meaning of 'illegality' in relation to novostroikas on the outskirts of the city.

less visible legal spaces of tenants living in both the planned and unplanned areas of Bishkek.

Conclusion

If 'after transition' is to contemplate post-socialist change that is fixated on East and Central Europe, 'after institutional transition' over-emphasises the official changes altering or that have altered socialist institutions while falling short of recognising the embedded practices that continue to be performed at the everyday level by local actors. The mechanisms of such institutions still rely on individuals that have worked in both the Soviet and the present period, material remnants remain as before and attitudes continue to persist. Studies on change in post-socialist cities have the possibility to provide, therefore, an understanding of how official policies are 'domesticated' in neoliberal contexts as a counterpoint to conceiving transformation from a 'top-down' perspective. It is the blending of persisting socialist elements and the internalisation of a neoliberal doctrine that consequently results in a 'mutation' of the socialist institution shifting it into a contemporary format (Golubchikov and Phelps, 2011: 428) – a format that contradictorily bears multiple changes and continuities.

In Kyrgyzstan, the formal changes to domestic legislation have reshaped the institutional workings of the *propiska* system yet fallen short of dismantling it altogether. These changes have resulted in a post-socialist version of mobility in Kyrgyzstan today, which, in turn, has reshaped urban space. As migration from one area of the country to another is no longer so stringently restricted as it was in the Soviet era, a new version of mobility reflects an ongoing division between the increasingly poorer rural areas of the country and the comparatively better-off and privileged city residents. Whereas in the Soviet period this urban–rural division was stringently maintained through workings of the *propiska* system together with greater investment and employment opportunities, the system's partial changes and de-industrialisation have resulted in spatial inequalities unfolding in an intra-urban context. Rural migrants are not restricted from physically moving to the city, yet accessing basic state provisions in Bishkek is complicated by heavily bureaucratic procedures that have become embedded within new understandings of property.

There is a mutual and interdependent relationship between the spatial characteristics of the city and institutional processes. The relaxation of the

propiska's stringent approach towards internal migration led to the increase of the city's migrant population which, in turn, formed new spatialities of informality on the edge of the city together with an increased demand for rentable properties in the city. Moreover, the changes in property relations as a result of privatisation reformed how the procedure of registration was administered favouring property owners in comparison to those individuals with other property interests.

While the spatial formation of informal settlements emerged in part as a result of reducing the restrictions of the *propiska*, the increase of these settlements on the city's edge, in particular, serves as a reason for some groups to advocate reducing these restrictions further or abolishing the *propiska* given the problems that those residents have in accessing public services through official channels. On the other hand, the visual presence of such settlements and internal migrants in the city has led to other interest groups arguing for the preservation or strengthening of the *propiska*. These groups continue to see the *propiska* as a tool to protect the city from 'overcrowding' and 'invasion' from migrants. The *propiska* system has therefore become a subtle mixture of real and imagined characteristics, which continue to shape its future pathways. These debates over the *propiska* are produced through the city: by the close proximity of internal migrants living in illegal settlements and 'old-timers' as well as through perceptions of who has a right to live in the city.

In analysing aspects of post-socialist urban change, in this paper we aimed to emphasise the ongoing aspects of institutional transition by expanding on the meaning of the 'institution' beyond initial political and economic programmes implemented in the 1990s. In doing so, we take on a more localised understanding of the institution as a means to understand how it is shaped, produced and 'domesticated' by actors. We acknowledge not only how institutional change has affected spatial change in the city (Taşan-Kok, 2006) but also, with the simultaneity of multiple transitions (Sýkora and Bouzarovski, 2012), how urban change – in our case, the privatisation of housing stock – has become incorporated into the (re)workings of the institution thus forming a reciprocal rather than sequential relationship between city and institution. Drawing on the combination of multiple framings and the embedded nature of transition we witness the unfolding of 'hybrid spatialities' as the paradox of legacy and change reveals a mutated institution undergoing the continuous process of transition.

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Paper II:
Entrenchment through legal (re-)enactments

Hatcher, C. (in print) Globalising homeownership: housing privatisation schemes and the private rental sector in Bishkek, Kyrgyzstan.

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Globalising homeownership: housing privatisation schemes and the private rental sector in post-socialist Bishkek, Kyrgyzstan

Research has shown how private homeownership features prominently in housing policy on a global basis. Little critique exists, however, on how property is framed in more contemporary privatisation policies unfolding in today's post-socialist cities. Taking the case study of Bishkek in Kyrgyzstan, this paper examines the extent to which the government and international community remain focussed on homeownership to the detriment of developing policies and legislation on other ancillary property rights, notably for the private rental market. The article examines two contemporary housing programmes: Homeowner Associations (HOAs) and the government's approach towards informal settlements on the city's outskirts. These two programmes are examined in relation to wider practices of privatisation introduced in the late 1980s and 1990s, which resulted in the sale of state housing, and the distribution of land plots on the city's outskirts. The results indicate that tenants often remain either invisible or their rights are subjugated to the owner's interests in contemporary housing policy and legislation. Moreover, where their rights are recognised, a disjuncture exists between representations and the reality of property that reflect wider notions of 'fuzzy' post-socialist property rights.

Key words: *homeownership, tenants, property rights, post-socialism, privatisation, Kyrgyzstan*

The collapse of the Soviet Union in the early 1990s saw the newly created independent states pursue varying paths of transformation that were designed to ensure the dismantling of their planned economies and a movement towards the free market and liberal democracy. Mass privatisation of the vast array of public assets held by the state was a key aspect of transformation implemented in most of the former republics of the Soviet Union and widely throughout Eastern and Central Europe during the early 1990s (Verdery, 2004; Dorondel and Sikor, 2009). Private homeownership formed a central part of these privatisation policies with many newly created governments transferring property ownership that was previously abstractly held by the 'whole people' to individual sitting tenants at a price lower than the market value or for a nominal administrative fee (Verdery, 2007). Transferring ownership to sitting tenants was perceived as a way of granting a quick source of capital to the country's citizens that would kick-start the newly anticipated market economy and absolve the state from the responsibility of managing and maintaining a crumbling housing stock (Undeland, 2002).

The privileging of private homeownership over other forms of property rights, such as renting, has become globally accepted and normalised through its tight link with the neoliberal agenda (Benda-Beckmann et al., 2006). As Margaret Thatcher embarked on the mass sale of state-owned housing in the UK in the 1980s, Western advisors such as the World Bank initiated their 'enabling approach' to housing in Latin America with schemes that limited the state's role as a provider of housing for low-income

households (World Bank, 1993). These policies were later 'dis-embedded' and then 're-embedded' in the newly independent countries of the Former Soviet Union in the early 1990s and thus further extended the global reach of private homeownership. The end of initial housing privatisation programmes left many of the newly independent states with extremely high rates of ownership where today often over 90 per cent of each country's total housing stock is owned privately (Lipman, 2012).

Through a case study of housing in Bishkek, the capital city of Kyrgyzstan, this paper argues how the deepening entrenchment of pro-'ownership' programmes by the government marginalises an increasing part of the urban population who rent properties from private landlords. Two contemporary housing 'programmes' are discussed to illustrate this entrenchment. First, Homeownership Associations (HOAs) introduced by the government in 1997 as a means of 'empowering' apartment *owners* to take collective responsibility over the communal and shared areas of their building such as the stairwells, elevators and the roof. Second, the government's continuing tolerance towards illegal settlements established on the outskirts of Bishkek in 2005. Both issues are discussed in the wider context of housing programmes implemented during the transformation from planned- to market-orientated governance practices during the late 1980s and early 1990s.

The paper discusses these two housing programmes together to illustrate how the importance of ownership, or *de facto* ownership in the case of the city's illegal settlements, is a city-wide phenomenon stretching the 'planned' and 'unplanned', parts of the city.[64] The 'city' is therefore taken as the scale of analysis to demonstrate the wider extent of ownership and, specifically, the importance of individuals taking responsibility for their housing situation. Moreover, the scale of city is important for highlighting how the issues faced by tenants occur citywide and are not just evident in isolated neighbourhoods. The paper therefore attempts to provide an overview of how the privatisation of the housing sector continues to unfold in Bishkek and, while private rental tenure is complicit with these practices, tenants remain outside of existing housing governance. This can be problematic for some tenants, especially in terms of officially accessing public services in the city such as medical care and schools where a city residence permit (*propiska*) is required.[65] Moreover, where tenant rights are acknowledged in legislation, a schism exists – or what Blomley and Sturgeon (2009) refer to as the 'ontological fallacy' of property – whereby

[64] The author recognises that the use of such binaries is problematic but uses the categories of 'planned' and 'unplanned' as a departure point to highlight two different types of privatisation programme that are unfolding in spatially distinct parts of the city.

[65] '*Propiska'* (Russian) is the Soviet term which is still in use today by officials working in the system and ordinary residents in Bishkek. The official term, however, is *registratsia,* although this was rarely mentioned in the interviews that form part of the data for this paper.

concepts and representations fail to resemble the reality and everyday experiences of property.

The methodology for this study concentrates on legal analysis of Kyrgyz legislation combined with developing an understanding of how the law is working in practice, or what Benda-Beckmann et al. (2006) refer to as 'ground truthing' the law. An understanding of the everyday experiences of the law was developed through interviews (n= 59) and group discussions with tenants, property owners, residents of informal settlements together with organisations and individuals responsible for various public and private housing management and maintenance roles in the city. Interviews were also held with lawyers to assist with the understanding of individual pieces of legislation and the structure of the wider legal system in Kyrgyzstan and its theoretical underpinnings, together with opinions on how the law *should* be working. The interviews were conducted in Kyrgyzstan over a period of eight months at various stages between January 2011 and July 2012, and a shorter visit in 2013. The legal analysis of Kyrgyz legislation took place before, during and after this period.

The paper is structured around four main sections. The first section looks at existing literature on the increasing importance of property ownership and the subsequent marginalisation of (private) tenants' rights. The second section examines the implementation of privatisation programmes in the city through the sale of state-owned housing and the distribution of land plots to individuals to construct their own housing. The third section then respectively links the sale of state-owned housing to the introduction of HOAs as a means of managing and maintaining housing stock and the policy of land distribution to the later formation of illegal settlements on the outskirts of the city. The fourth section addresses how tenants are conceived in these new 'post-privatisation' policies as well as how they are affected more generally in terms of accessing public services in the city in comparison to owners.

Exploring global homeownership

International organisations and Western governments continue to package and export a dominant a way of understanding property as a legal model to cities on a global basis (Hann, 2007; Sturgeon and Sikor, 2004). The implementation of title formalisation schemes (de Soto, 2000), housing privatisation policies (Verdery, 2004) together with state-subsidised homeownership programmes (Lemanski, 2011), all collectively support the growth of private ownership across cities of the global South. Private ownership is 'essentially private property' where a "single owner [is] identifiable by formal title and enjoys the rights associated with owners

such as the right to exclude others" (Blomley, 2004, 126). Embedded in assumptions of eighteenth-century liberalism where private property was synonymous with individual freedom, personal responsibility, and the limitation of state authority, the bounded and individualised space of the globalising version of property ensures its fungible nature – being both interchangeable and replaceable – and is thus conducive to the capitalist system and free market exchange (Egan, 2013).

The actions of the property owner are qualified to a certain extent, however. Other individuals and institutions might have a right over the property, although, in a neoliberal legal context, these other rights are minimised and often framed to ensure limited interference with the owner's interest. This has led the 'normalizing version of property' (Benda-Beckmann et al., 2006) to be understood as a 'bundle of rights' which centres on the relations among different actors and institutions with regard to an object (Marcuse, 2011). Several parties could therefore have a claim over a property: the mortgage lender that can take possession of the property in the event the borrower defaults on a loan; the tenant who rents the property and pays a fixed rental payment every month; and, ultimately, the state that may exercise the right to compulsorily acquire property.[66] Moreover, Verdery (1998) extends on the 'legalistic notion' of the bundle of rights analogy by suggesting that property is best analysed in terms of the whole system of social, cultural and political relations and rather speaks of a bundle of powers. This addresses the power hierarchy between the different right holders and reflects the overlapping nature of such rights (Sikor, 2006). As Verdery (2004, 191, author's emphasis) emphasises: "power affects *which* actors and relations are recognised or privileged in a given understanding of property, as well as permeating the wider field of social relations in which persons and values are linked."

The privileging of property ownership has become a representation that governments have aspired or feel they ought to follow regardless of whether property relations fail to resemble this model at the ground level (Benda-Beckmann et al., 2006). Verdery (1999), for example, notes how privatisation strategies in Eastern Europe did not – as was initially predicted by Western economists – result in an abrupt transition from socialist property rights to an individualised and exclusive system of private property conducive to capitalism. Instead, she argues that property rights are 'fuzzy' and ambiguous in post-socialist contexts as a result of their history and the gradual transformation of social relations and attitudes towards property. Consequently, Blomley and Sturgeon (2009, 566) argue that the obscurity of property rights in relation to the dominant notion of

[66] Other limitations over the use of property include zoning regulations, covenants, easements as well as laws relating to nuisance.

private ownership should not be perceived as a failure just because they differ from this normalising version. Acknowledging context and local embeddedness invites consideration of alternative ways of organising property.

The emphasis placed on ownership simultaneously discredits the importance of non-ownership property rights such as renting (Blomley, 1997). While homeownership is promoted by many governments as being financially attractive for its citizens and instils autonomy and responsibility, renting, on the other hand, often remains silent in housing policies (UN-Habitat, 2003; Gilbert, 2008). This silence reflects wider social attitudes towards renting which can often be negative in comparison to homeownership. Homeownership is strongly tied to notions of the 'good citizen' with its promoters claiming that it contributes to the overall 'health of society' by fostering social stability (Tighe and Mueller, 2013). Owners ostensibly invest more in their community to maintain land-values and, as a result, tend to remain in the same area for longer. As Blomley (2004) notes, tenants are conceived as 'incomplete' owners who are generally poorer and untrustworthy in comparison to owners who are stable and responsible. Writing in the context of the global South, Cadstedt (2012) posits that owners often tend to participate more than tenants in local organisations and develop a greater number of informal contacts in their neighbourhood. Tenants, she argues, tend to have more individual concerns related to their rent payments, the threat of evictions and maintaining a personal relationship with the landlord. On the other hand, Rohe and Stegman (1994) note in their study based in Baltimore, USA, that although homeowners are more likely to participate in neighbourhood associations they do not participate any more than tenants in other community-related activities. Critics of homeownership also highlight how it is broadly linked to spatial segregation as those who can afford to purchase their own property cluster in certain areas, while lower-income households rent property (Kährik, 2000). Tenure differences therefore manifest themselves in spatial divisions, thus shaping the fragmentation of cities.

UN-Habitat (2003, iii) notes that few governments are taking rental housing seriously and that it continues to be the "greatest hole in national housing policies." Few governments are building houses for rental purposes and most state housing continues to be sold off (Gilbert, 2008). Tenants exist, however, in all cities across the globe and form a significant proportion of urban populations. Renting is the preferred tenure choice for certain groups of individuals, especially a young and mobile workforce who rely on the rental market when they move from rural areas to cities in order to study or work (Dübel et al., 2006). Rakodi (1995) notes that

renting is extensive in West African cities where migrants retain strong ties to their areas of origin and savings are invested in the home area rather than in the city. The private rental market therefore satisfies insecure job tenure by reducing housing transaction costs in comparison with moving from one owned property to another. Renting also offers a housing solution for those individuals who are unable to afford to buy a property. Moreover, it plays an essential role in multi-local livelihoods where families are split within and across international boundaries as some members migrate for work, often relying on rented properties, while others remain behind (Thieme, 2012).

Privatisation: Selling state-owned housing and land distribution

In comparison to other socialist republics, Kyrgyzstan had a history of extensive private ownership during the socialist period. Shortly before the government initiated its privatisation programme at the beginning of 1992, 74.5 per cent of the country's housing stock was already privately owned,[67] although this figure was much lower in urban areas such as the capital, Bishkek (Feiden et al., 1993). While private property was tolerated, its fungible quality was absent in socialist property regimes: owners could neither sell their property nor profit from it. Property was therefore either 'exchanged' rather than sold, or a private owner or tenant could rent or sub-rent a property or part of a property but could not profit from this by charging a rent above the prevailing rates of the area (Maggs, 1961). This firstly curtailed the development of a housing market and secondly, inhibited the growth of a private rental market as tight rent controls removed any incentive for owners and tenants to rent or sub-rent their properties. An illegal rental market did exist, however, and exchanges of properties, where an illicit financial agreement was reached, were not uncommon.

Privatisation of the state's housing stock developed momentum shortly after Kyrgyzstan's independence on 31 August 1991 with the privatisation law drafted at the end of that year (Law on the Privatisation of the Housing Fund, 1991). Privatisation was part of a much larger process of "deep and comprehensive economic transformation," which would minimise state intervention by deregulating the public sector and the labour market and establish legislative norms to encourage growth of the private sector and foreign investment (Abazov, 1999, 197).

[67] This is possibly because a large proportion of the population were living in rural areas at the time, where private individual properties were more common than in urban areas.

The Kyrgyz government initially administered the privatisation programme through a voucher method classified as a 'Special Means of Payment' (SMP) (Jermakowicz and Pankow, 1994). Initially, each citizen received an SMP to a specified value calculated according to the individual's 'economic contribution' to the country based on their wage during the Soviet period and length of service. SMPs could be tendered in exchange for housing currently occupied by the voucher holder, as well as in shares of the municipal enterprises, joint-stock companies and other entities subject to privatisation (Jermakowicz and Pankow, 1994). Only a small percentage of SMP vouchers had been tendered by December 1993 and were later replaced by privatisation coupons and other incentives (such as rent increases of municipal properties) to further encourage housing privatisation (Pangaea, 1997). By 1994, an overwhelming percentage of the country's housing stock – over 90 per cent – was privately owned (UNECE, 2010).

As well as privatisation of housing, shortly before Kyrgyzstan's independence in 1991, the Soviet Administration began to allocate and distribute land on the outskirts of the city. This mirrored wider transformations unfolding in the country as promises of the ailing socialist state continually failed to materialise in relation to housing provision, and *perestroika* (restructuring) reduced restrictions on nascent civil society movements. Political movements such as *Ashar* (meaning 'goodwill' in Kyrgyz) began to form as early as May 1989. *Ashar* was a group of young urban residents who had originally migrated to the city to study and had decided to stay there afterwards. The members gathered on 'unused' land on the edge of the city to protest over their poor housing conditions and the long waiting list to be re-housed. The Soviet City Administration eventually agreed to distribute land on the outskirts of the city to the protestors. Four settlements (referred to as *novostroikas*, or new settlements, in Russian) were initially established in 1989 followed by two more the following year and another in 1991.

Despite popular opinion in Bishkek (Nasritdinov et al., 2012), the first *novostroikas* were established with the support of the government and therefore were not 'illegal'. Although the new landowners constructed their own housing, the government provided loans for building materials and land was allocated through an official procedure. The land distribution scheme therefore transferred aspects of housing responsibility that rested with the state (notably, its construction) to the new landowners, representing an alternative form of privatisation that was emerging on the city's outskirts in comparison to the privatisation of existing state-owned housing which largely concerned multi-occupancy apartment buildings in the 'planned' areas of the city constructed during the period of the Soviet

Union. *Novostroikas* are, and remain today, low density, often no more than two-storeys and formed of individual private houses rather than multi-occupancy apartment buildings.

Post-privatisation: dealing with crumbling houses and illegal settlements

Housing remains one of the biggest social problems in Kyrgyzstan, despite earlier privatisation schemes (UNECE, 2010). A large proportion of the city's housing stock remains in a dilapidated state of repair as a result of neglect prior to and after the collapse of the Soviet Union (Figure 1). Moreover, an increase in internal migrants moving to Bishkek has put extra pressure on the lack of affordable housing and led to the increase of illegal settlements on the edge of the city together with the growth of existing ones. The next section reviews the housing policies implemented by the government with the assistance of international organisations to alleviate such issues. These policies rely on and extend notions of homeownership conceived in the initial privatisation policies of the early 1990s, yet continue to ignore the needs of the city's growing rental population.

Figure 1: Dormitories, typically rented properties, located near a market in Bishkek (Hatcher, 2012).

Homeowner Associations (HOAs)

While the Law on Privatisation of the Housing Fund (1991) stated that residents both acquired ownership of their apartments and an indivisible proportionate share of the common areas of the building, maintenance of these areas following the initial years of independence, and in many cases still today, is limited. Maintenance of the communal areas for many apartments was previously in the hands of the municipal government during the Soviet period and organised through a series of individuals (*Domoviy Komityet*) who were in direct contact with a district-level organisation *(Domoupravleniye)* that dealt with the maintenance and other administrative issues. Privatisation resulted in the transfer of responsibility over housing maintenance to the individual owners. The newly created owners, however, were often unaware, financially unequipped, and lacked the relevant skills for this new role of property responsibility. *Domoupravleniye* were also converted into private joint-stock companies which continued to deal with maintenance issues of communal areas. These newly formed companies continued to receive the negligible contribution that residents paid during the Soviet era but without the previous significant donation from the municipal authorities, therefore constraining their effectiveness and, subsequently, their popularity. This combination of new owners unaware of the responsibility of homeownership and the failure of private companies to manage such buildings resulted in the continuing decline of apartment blocks in the city.

With international assistance, the Parliament enacted the Law on Homeowner Associations (1997) to offer an alternative to private joint-stock companies and therefore address the shortcomings of initial privatisation programmes that failed to resolve the issue with the country's crumbling housing stock. HOAs are designed to serve as community building mechanisms where owners would solve problems and function as democratic platforms by electing a chairperson and making decisions collectively on the management issues of the building(s). By 2013, just over half of the multi-occupancy apartments in Bishkek were part of an HOA (Ozmitel, 2013).

HOAs involve the owners of multi-occupancy buildings coming together to form a non-profit company. The owners that wish to form the company (a minimum of two-thirds of owners is required) become members who are then eligible to elect a company chairperson (Law on Homeowner Associations (LHA), 1997, Art. 3). The chairperson is responsible for collecting fees from each owner (including the non-members). The fees are then used to pay for the maintenance and operation of the building.

The municipal government also offers grants for certain repair-works to the building in an effort to promote HOAs. The incorporation of the HOA involves the transfer of the land beneath the apartment building or a collection of apartment buildings. In Kyrgyzstan, this is known as obtaining the *krasnaya kniga* or the 'red book' and means that the owners are also allowed to make decisions over the land that surrounds the apartment building or joins multiple buildings that often include play areas for children, roads and car parking places.[68]

HOAs are paradoxical in that they both qualify and at the same time bolster the dominant notions of private ownership. By strengthening the co-ownership rights over the building and the land, the notion of property as individualised and freestanding is textured by recognising the links and the relations that form between different property owners that comprise the HOA. It is questionable, however, whether Bishkek, like other post-socialist cities (Hirt & Petrovic, 2011), is becoming increasingly fortified through such schemes where previously public spaces become increasingly private (Smith, 1996). This was nicely illustrated by a sign fixed to the gate of one of the HOAs visited in 2012, which read, 'STRICTLY PRIVATE PROPERTY. Prohibited: car parking, drinking alcohol, littering, presence on territory without a resident of the HOA' (Figure 2). The HOA consisted of three, multi-occupancy buildings and a green, iron fence that marked the periphery of the outer territory. Such a territorialisation of space that was once public is becoming increasingly common in post-socialist cities where a unique version of the 'gated community' is beginning to emerge (Hirt and Petrovic, 2011). Unlike the large-scale, gated communities of South America or the USA, these are on a smaller and fragmented scale and are often demand- rather than supply-driven developments, although these are evolving into the more traditional version of a gated community in some post-socialist cities in Eastern and Central Europe and Moscow (Hirt and Petrovic, 2011). Regardless of scale, however, scholars and policy-makers argue that these 'homogenous enclaves' increase segregation in the city (Vesselihov et al., 2007).

While academic literature addresses the urban fragmentation and exclusionary nature of privatisation in cities, one HOA chairperson emphasised the links that formed between her HOA and other apartment buildings and how this could assist with the wider development of Kyrgyzstan:

> 'If everyone lived like this, we would develop our country. Everyone would live in prosperity. I want everyone to live like this,

[68] Land ownership is a relatively new and contentious feature of privatisation in Kyrgyzstan. In October 1998, private landownership was granted following a national referendum and a subsequent constitutional amendment that converted former 49-year land-use rights into legal ownership documents (Steimann, 2011).

so I help neighbouring *domkoms* [*Domoviy Komityet*]. I help everyone who comes to me. I even allow them to make a copy of the documents I have used in order for them to get grants like we did for these buildings.'

Linkages between a group of private properties such as the HOA above and other apartment blocks become evident in a similar way to the links that form between the individual property owners within the HOA. This therefore distances ownership from its individualised definition prevalent in liberalism (Blomley, 2004) and instead emphasises the relational aspect of property through the different linkages that emerge between individuals and also institutions or groups of property owners such as the HOA.

Figure 2: A sign to the entrance of an HOA located in one of Bishkek's residential districts (Hatcher, 2012).

While HOAs have, in some cases, been successful in tackling the deterioration of housing, several HOA chairpersons noted that their success relied on the efforts of one resident who was able to take on the responsibility of establishing and managing such an organisation. Reaching a compromise between members over where money should be allocated, especially if the HOA is formed of more than one multi-occupancy building, is challenging. Members are often unwilling to see their money invested in a building other than their own and one chairperson noted how she had recently re-incorporated the HOA as a single multi-occupancy building and therefore separated from two other buildings that were originally part of the association.

Illegal novostroikas

The later development of some *novostroikas*, especially after the privatisation of land in 1998, was a result of illegal land grabbing and housing construction largely by internal migrants from other, often rural, regions of the country.[69] This migration from rural areas is linked to the privatisation of the agricultural sector in Kyrgyzstan and the reproduction of existing disparities between a rural elite and ordinary workers. Widespread corruption resulted in the inequitable distribution of former state land with some farmers receiving plots that are difficult to access and irrigate (Steimann, 2011). This has resulted in rural households diversifying their income by taking on a multi-local character with some members migrating to Bishkek, Russia or Kazakhstan to find work while others remain behind. The municipal government legalised these *novostroikas* retrospectively up until 2005. Most of these have developed further and have been upgraded by the government with asphalt roads laid and connections made to the city's electricity grid, together with the development of schools and local health centres (Figure 3).

Figure 3: A legalised novostroika located on the outskirts of Bishkek (Hatcher, 2011).

The recent increase in illegal settlements is more closely linked to the political fragility in Kyrgyzstan following the tumult of the Tulip Revolution

[69] '*Novostroika*' is used widely in Bishkek to refer to both legalised 'informal' settlements and illegal settlements on the outskirts of the city.

in 2005, which saw the ousting of the country's first president, Askar Akayev, and the subsequent election of Kurmanbek Bakiyev. The election of Bakiyev at the time represented a geographical power shift in the country between the 'political elite coalitions' of the north and south (Ryabkov, 2008). Bakiyev was born and grew up in Jalalabad in the south of the country and, after holding various managerial positions, became head (*akim*) of the region's administration from 1995 to 1997 (Abazov, 2004). The inauguration of a president who drew strong support from the south together with declining living conditions in the southern regions provided a stimulus for migration from south to north and especially to the capital, Bishkek (Flynn and Kosmarskaya, 2012). Today there are a total of four illegal settlements in the city. Many informants living in these *novostroikas* emphasise how Bakiyev promised land in the city to people from the southern *oblasts* so that they would support him in the 2005 election. Bakiyev later rescinded on this promise when he was eventually elected president and the settlements continue to remain illegal. Approximately 4,500 homes are 'illegal' in the *novostroikas* with the possibility of only 1,500 plots becoming legalised in the future as most of the residents are living on environmentally hazardous land.

Despite this 'illegal' status, the residents do have a political voice in the city. A chairperson of an NGO working with the illegal settlements noted that there is a fear of the residents by the government, as well as more generally with the city residents. The residents of the illegal *novostroikas* have been linked to the bloody uprising in the city in 2010 that saw the storming of the presidential building, looting throughout the city's commercial areas, and the subsequent fleeing of the incumbent president, Bakiyev. The potential for further unrest is the city is often referred to as an unofficial reason for not forcefully evicting the residents. The residents of one illegal *novostroika*, in particular, continue to demonstrate their political leverage in the city through acts such as blocking main arterial roads. This has led to promises and the eventual upgrading of the settlement together with the continued assurance of titling the land which would, in turn, provide the necessary documentation required to obtain a city residence permit (*propiska*) and therefore access public services such as health care and schooling through official channels. In September 2013, the settlement remained illegal but the government had assigned a doctor in a health clinic and assured school places in a neighbouring *novostroika* as a means to circumvent the *propiska* issue. Such a move by the government has both pacified the residents and temporarily delayed the need to grant legal title to the properties or initiate a resettlement programme.

Officially, the total number of legalised *novostroikas* stands at 48 with an estimated population of between 200,000 and 300,000. Nasritdinov et al.

(2012) argue that this has been exaggerated to fuel an anti-migration rhetoric led by some politicians and Bishkek 'old-timers' (*starozhily*). Instead, Nasritdinov et al. suggest that there are 22 legal settlements covering a third of the city's land-use but with a population of only 168,000 owing to their typically low densities in comparison to the rest of the city.

As with the introduction of HOAs in planned, multi-occupancy housing, the government's tolerance towards illegal settlements reflects the limited role of the state as provider of housing and the reliance on ownership to address this limitation of responsibility. In the case of illegal settlements, ownership is *de facto,* yet the political voice of the residents together with the state's incapacity to provide alternative housing, ensure security of tenure for the settlements. Therefore, as with the private homeowners taking collective responsibility over the management of their building through the formation of an HOA, the residents of illegal settlements take responsibility for building their own homes (and, in some cases, the wider infrastructure issues of their settlement), a responsibility which fits with the wider agenda of privatisation in the city. The next section addresses how private rental tenure develops alongside 'ownership' yet remains largely neglected from contemporary housing policies and programmes. This neglect creates both an inequitable relationship between tenants and landlords, and inhibits official access to public services by the city's tenant population.

Invisible tenants and city registration

Those who rent in Bishkek today are typically internal migrants and therefore neither acquired ownership of a property in the city during the sale of state assets nor were granted a plot of land in one of the city's informal settlements. Buying a house is often out of the question for low- and middle-income earners given that the relatively small, but growing, construction industry in Bishkek concentrates on the development of 'elite' housing aimed at the more affluent city-types. In 2012, the average price for a property in Bishkek was $38,000 while the GDP per capita in Kyrgyzstan was $2,400 for the same year (Denisenko, 2013). The development of social housing by the state is also extremely limited and mired in corruption controversies with government officials rumoured to transfer such properties to themselves and privatise them immediately (Tokoeva, 2013). These social housing schemes also continue to position ownership as a central feature. Residents who do manage to navigate the red tape and corruption of such schemes must take on an onerous mortgage for the property, which stipulates complete payment of the loan within fifteen years and an initial deposit of six per cent of the total property cost (Struyk and Roy, 2006).

There are three main options for renting a property in the city, depending on how much an individual can afford to pay. First, and most expensively, individuals can rent properties typically in a multi-occupancy building. Second, rental properties are also available in Bishkek's legalised *novostroikas* on the outskirts of the city, which vary in building standards and connections to urban infrastructure. Third, properties are available to rent in the city's illegal *novostroikas,* although renting is much less common in these newer settlements as most of the housing is still occupied by the original migrants who moved and constructed their own property there. This is emerging as a more popular form of rental tenure, however, particularly as the settlements develop in terms of infrastructure. Individuals interviewed who rented their homes in the city ranged from professionals working in international companies to families where the husband was engaged in temporary seasonal work (often construction) while the wife remained at home, reflecting the wider rental market in the city.

Renting was typically described as a temporary housing option by informants either for financial reasons (they could not yet afford to buy a property) or for work and seasonal reasons. Financial issues varied across income levels and were not only restricted to lower-paid individuals. Many residents living in illegal *novostroikas,* for example, highlighted that they moved out of the *novostroika* and rented a heated property in the city during the cold winter months. Residents also noted how they had permanently moved to a *novostroika* from rented accommodation in the city, which they had lived in when they first moved there. Moreover, 'property' was sometimes discussed from the perspective of the extended family and would include several properties. Part of the family, for example, would live in a *novostroika* and another part in rented accommodation nearer to where the main income earner worked. Renting therefore commonly plays an ancillary role to homeownership and is a preferable and temporary alternative during winter months, upon initially moving to the city and as a means to be closer to work opportunities.

The number of properties available to privately rent has increased significantly since the country's independence in 1991. The elderly population which accounted for approximately 15 to 20 per cent of urban units in post-socialist cities in 1996 (Struyk, 1996) has gradually decreased which has in recent years led to an increase in houses available to purchase or to use as a source of rental income by the families who inherited the property. Families who received more than one property during the initial privatisation programme also often consolidated their living arrangements and made one or more apartments available to rent in order to secure

additional income through renting. The purchase of property as an investment opportunity, as supported to a certain extent by a nascent mortgage market, has also contributed to the growing number of rental properties. Finally, private owners leaving for Russia and Kazakhstan, often for better work opportunities, have also led to more properties let by an increasingly growing number of absentee landlords. In 2007, approximately 23,0000 families were renting property in the city (Temirova, 2010) while students also form a large and dynamic proportion of the city's transient rental population.

Agreements between landlords and tenants are generally verbal which can put the tenant in a vulnerable housing situation. One tenant living in a legalised *novostroika* noted that she had to move out of her house without notice when her landlord returned to the settlement to live in the property. Another tenant was initially given 20 days' notice but the landlord decided to forfeit the lease after only 15 days, with no prior warning. At other times, the personal relationship between landlord and tenant had advantages, with one tenant noting that her landlord, who lives nearby, would wait for rental payments if she had no money. A problem arises, however, for internal migrants who rent properties in Bishkek and subsequently need to obtain a city residence permit (*propiska*) in the city. According to the Law on Internal Migration (2002), migrants who move 'permanently' to Bishkek must register their new address with one of the city's registration offices within five days of arriving. The registration system acts as a planning tool for the government to calculate the number of individuals living in different areas of the country ensuring that public resources are allocated proportionately to that particular region. Individuals are therefore required to have a residence permit for Bishkek in order to access public services such as education and health care in the city and also to vote and obtain social security benefits (Hatcher and Balybaeva, 2013).

Tenants are required to register their address in the city and, according to the Law on Internal Migration (2002), can do this by submitting a copy of their tenancy agreement to the local authorities. Although there is no specific law on renting property, the Civil Code (part II, 1998) regulates this by first requiring that the tenancy contract must be completed in writing and registration of the rental contract is mandatory if the tenancy period is longer than three years or more, or if one of the parties to the contract requests to do so. In practice, however, landlords will rarely agree to enter into a written tenancy agreement. One tenant noted that his landlord refuses as this could complicate matters if the house were to be sold in the future. Aina, who rents an apartment in the city but had to register at her friend's house, said that her landlord refused to register her

at her actual property over fears that Aina would be able to claim partial ownership of the property.

The property owner's fear of registering the tenant reflects the 'fuzzy' character of post-socialist property relations in Bishkek (Verdery, 1998; Sturgeon and Sikor, 2004). The distinction between owner and tenant are unclear which prevents the former from agreeing to register the latter. The wider social relations between the owner and tenant therefore need to be considered. The property owner's reluctance not only emphasises the power imbalance between different right holders but also how the muddied and uncertain nature of property relations in Bishkek enforce such behaviour. One lawyer noted that the reluctance to register tenants derives from the Law on the Privatisation of the Housing Fund (1991) and a spate of legal cases in the early 1990s that are no longer relevant today. Registration at a property played an especially important role during the housing privatisation period as it acted as proof of who should legally receive the property. There appears therefore to be a disjuncture between conceptual definitions of property with the everyday experiences of the law that demonstrate a 'recombinant' version of property which oscillates between past and present (Stark, 1996). A formal relationship between landlord and tenant is therefore hindered by interpretations of the law that are no longer valid today and which continue to restrict tenants from accessing public services in the city.

As well as incorrect interpretations of the law impeding tenants' rights, more recent legislation explicitly excludes tenants from wider decision-making processes in relation to the property which they rent. While the law which governs HOAs allows the owners to rent their property to tenants, the tenants 'do not have the right to vote or participate in the management of the [HOA] but are obliged to comply with the rules' (LHA, 1997, Art. 13). The democratic principles of the HOA therefore only seem applicable to those who own their homes while tenants remain outside of decision-making processes that could affect them. The chairperson of one HOA also noted that she could not assist tenants who were often internal migrants with obtaining a city residence permit unless the owner agreed, which, invariably, was never the case.

Tenants therefore remain stuck between informality and formality. While they often live in a property recognised by the state, the formal status of the property is irrelevant for the tenant if the owner does not agree to enter into an official relationship with them. This lack of registration means that the tenant has to either acquire registration documents through informal means by, for example, registering against a property where they do not actually live or access the city's public services by paying

additional bribes in comparison to those who have a registered status. Whereas residents of illegal *novostroikas* are developing a political voice which has caught the attention of international donors and initiated a response from the government, tenants remain unacknowledged or expressly excluded from contemporary housing policies. The state therefore remains inaccessible to tenants. This is reproduced by landlords refusing to register tenants at their properties thus restricting the latter from accessing public services through official channels. A formal material property that is recognised by the state does not necessarily therefore equate to a formal property right for the tenant. Taking the bundle of rights analogy, it appears that the state, the property owner and the tenant have an interest in the property, yet the power imbalance between the property owner and the tenant subjugates the latter thus inhibiting them from forming a relationship with the state.

Conclusion

As Gilbert (2008) notes, governments have greatly reduced the number of tenants through the implementation of policies that focus on ownership as a means of building stronger and more responsible communities. This is evident in Kyrgyzstan, as the government, with assistance from international organisations, has reduced the state's role in maintaining a deteriorating housing stock and as a provider of housing for low-income households through schemes that continue to remain focussed on homeownership. Renting, however, plays an increasingly important role in Bishkek for its young and dynamic population and operates as a housing tenure alongside homeownership. The temporary nature of renting provides a vital housing option for new arrivals to the city seeking work together with those who remain in insecure and temporary jobs. Renting also plays an important role in the winter months when conditions in some of the *novostroika* become difficult, especially for young families.

An unregulated rental market can make conditions difficult for tenants in the city, especially in accessing state services such as health care and education. Legislation regulating the relationship between landlord and tenant remains ineffective reflecting Blomley and Sturgeon's (2009) ontological fallacy of confusing property concepts with real objects. Accordingly, the landlord-tenant relationship establishes a hierarchy whereby the landlord often refuses to enter into a formal arrangement with the tenant. This individual relationship, however, is embedded within wider post-socialist transformations unfolding in Bishkek. The uncertain nature of the relationship between landlord and tenant represents the interweaving of past and present legislation and the ongoing 'fuzzy' property relations of postsocialism (Verdery, 1998). A power play thus

endures between the different right holders of the property bundle. Landlords only agree to enter into an informal relationship with tenants to protect their own property rights by ensuring the tenants remain invisible. By privileging homeownership and failing to acknowledge the growing number of tenants, particularly in the city of Bishkek, the state has neglected the important role that rental tenure plays as an ancillary form of housing to homeownership which, in turn, restricts tenants from accessing public services.

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Paper III:
Processes of state 'illegality'

Hatcher, C. Illegal geographies of the state: legalising an 'illegal' settlement in Bishkek, Kyrgyzstan.

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Illegal geographies of the state: legalising a 'squatter' settlement in Bishkek, Kyrgyzstan

Purpose: This article aims to problematise the relationship between 'legality' and the state. In doing so, the article argues that studies on law and geography should consider the broader processes of state 'law making' in order to understand the production of illegal space.

Design: The liminal boundary of illegal/legal in relationship with the state is developed through a case study on the legalisation process of a squatter settlement on the outskirts of Bishkek, the capital of Kyrgyzstan. The paper draws on primary qualitative research (semi-structured interviews) and legal analysis undertaken in Kyrgyzstan at various times between 2011 and 2013.

Findings: Examining law as static and pre-existing is problematic in developing an understanding of the production of illegal and legal space. An emphasis on law making and the process of legalisation draws attention to the different groups, practices and policies involved and re-frames the relationship between the state and legality.

Originality: The paper addresses a theoretical and empirical panacea in legal geography by unpacking the 'legal' with reference to its plurality internally *within* the state. Moreover, studies on law and geography have tended to focus on European or North American contexts whereas this paper draws on data from Central Asia.

Keywords: *legal geography, law and space, squatter settlement, state, illegality, legalisation, Kyrgyzstan, Bishkek.*

1. Introduction: the state and processes of legality

On 8 August 2011, a group of over a hundred protestors gathered on the outskirts of Bishkek, the capital city of Kyrgyzstan, and began to block the main road connecting the central part of the city to the Dordoy Bazaar, a market and major trading centre for the Central Asia region. The protestors were all residents from Ak Jar, a nearby 'illegal' settlement located just outside the city's municipal boundary and home to largely internal migrants from other provinces of the country. This was the second time in less than a year that the residents had protested by blocking the road. During the first protest, the residents demanded legalisation of the settlement as well as electricity and water (Osmongazieva, 2010). This time, during interviews with the local press, the residents emphasised that they would continue to protest until the Prime Minister, Atambayev, agreed to meet with them to discuss the living conditions of the settlement (Podolskaya, 2011). As the settlement was 'illegal', the majority of its self-built houses were not connected to the city's electricity grid and, with no water connection, the residents were having to purchase expensive, bottled water delivered to the settlement by a private company. With a presidential election looming, in which Atambayev was a candidate, during a second day of protests a group of residents were eventually invited to

attend the White House, the parliament building in Bishkek, for a private meeting with the Prime Minister and several other government officials. The negotiations ended successfully for the residents, Atambayev visited the settlement a few days later and again shortly before the presidential election in October 2011 where, during a speech to the local press, he promised to improve the living conditions of the settlement. Atambayev won the election to become President of Kyrgyzstan and, in keeping his promise, funds from the Federal budget were set aside and infrastructural improvement works began at the settlement by the end of 2011.

Although the residents protesting on the edge of Bishkek in August 2011 were from an 'illegal' settlement, the excerpt above aims to emphasise how, following a series of protests and discussions, the state began to answer to their demands. This raises questions that form the themes of this article: why did the 'state' become involved with an 'illegal' settlement? And, how does the gradual involvement of the 'state' over time shift and unpack the meaning of 'illegality' and 'legality' to reveal a process rather than an end, reified condition? As Cooper (1996) notes, examining the production of illegality challenges the notion that laws are unambiguously enacted by states. Instead, a 'symbiotic relationship' exists between state and illegal practices and, especially, the "varied actors inside and around states [that] manoeuvre actual legality and illegality in complex ways" (Heyman and Smart, 1999, p. 11). Moreover, rather than understanding 'legal' or 'illegal' as reified end-products, examining legalisation, or illegalisation, as a process "challenges us to ask how a particular set of classifications, justifications, and enforcement practices are originated, put in place, and reproduced or changed over time" (Heyman, 2013, p. 304).

This article advocates an examination of the *internal* heterogeneity of the state in relation to law making practices. While legal pluralism addresses the possibility of legal orders beyond the 'state' existing "with different foundations of legitimacy, validity, power and authority" (Benda-Beckman and Benda-Beckmann, 2014, chapter 1), it is emphasised that within this "polycentric legal world, the centrality of state law, though increasingly shaken, is still a decisive political factor" (Santos, 2002 p.473). This centrality of state law, however, is seen as increasingly fragmented and internally pluralised (Santos, 2002) once meanings of the 'state' as a 'single agent' acting 'above' society (Ferguson and Gupta, 2002) are challenged to emphasise 'disaggregated' notions of power divided between 'state' and 'non-state' individuals and institutions (Sharma and Gupta, 2006). The article aims to demonstrate these notions of the disaggregated legal authority of the state through the case study of Ak Jar and how this disaggregation fluctuates over time to highlight a more dynamic account of (il)legal space.

In developing a more dynamic account of illegal space, the settlement of Ak Jar is presented as a 'splice' (Blomley, 2006). As Blomley (2006) notes, the notion of the 'splice' recognises how spatial orderings are simultaneously legal orderings, whereby both rely on each other. The illegal settlement of Ak Jar is therefore defined by its marginalisation both spatially, through its physical and social position on the periphery of the city, and legally, through its development 'outside' the practices of state law. Moreover, while such splices appear 'inert' and 'pre-given', examining how law and space are both actively constructed and performed, and are both in a sense of 'becoming' (c.f. Massey, 2005), unpacks this seemingly static (il)legal space to reveal the processes behind productions of law and space. The 'splice' is therefore used as an analytical tool for examining the changing and fluid character of law and space developing together over time within specific historical and geographical trajectories.

In examining the productions of illegal space in relation to Ak Jar, the article introduces the historical and geographical context of the production of 'illegality' on the urban-rural periphery of Bishkek. The historical discussion covers the period from 1989, shortly before the collapse of the Soviet Union, until 2010, a period of violent unrest in Bishkek and also in other parts of Kyrgyzstan. In the next section, the article focuses on the settlement of Ak Jar by exploring the process of legalisation over time. This involves unpacking the notion of the state through four different 'events' which, over time, destabilise the state-legality binary and, in turn, the categorisation of Ak Jar as an 'illegal' space.

2. Productions of 'illegal' space on the outskirts of Bishkek

Examining the temporal dynamics of legality and illegality and the processes that unfold over time – legalisation and illegalisation – allows an inquiry into the "actors, agendas, and responsibilities in ways that attend to power and history" (Heyman, 2013 p. 304). Such an approach goes "beyond the dichotomisation of state and non-state to recognise diversity and processuality of state activities and agents, likewise for the non-state side, and to look at interpenetration processes across the useful but limited state-non-state conceptual divide" (Heyman, 2013 p. 304).

Focusing on the consequences or outcomes of illegality is insufficient and requires developing an understanding of the temporal and evolving nature of such categories by arguing for historically informed accounts of such socio-political processes of illegalisation. Thus, in exploring law as a form of discourse, Jeffrey (2011, p. 345) highlights the "grounding of law in particular historical and geographical contexts, and its simultaneous

capacity to produce spatial arrangements and erase others." In Bishkek, changing political contexts together with wider social and political transformations since the collapse of the Soviet Union have altered relations between the state, law, and the production of (illegal) space. Productions of illegal space have therefore altered temporally along with changing power relations between different agents, practices and relationships (Blomley, 2008). After outlining the methodology, this section frames the wider historical context of 'illegality' on the urban-rural periphery of Bishkek before focussing on the settlement of Ak Jar, in the following section.

Methodology

The data for this article were collected for a total period of seven months at various points between January 2011 and September 2013. The data collection was part of the author's research project on internal migration and property funded by the Swiss National Centre of Competence in Research (NCCR) North-South. The research design involved a mixed-method methodology. This mixed approach incorporated both doctrinal analysis of Kyrgyz legislation and an ethnographic approach through observation and semi-structured interviews with various residents of three informal settlements in Bishkek, employees of local and international NGOs, and local lawyers working in Bishkek. In total 59 interviews were held either in English, Russian or Kyrgyz. Interviews with the residents of the informal settlements were mainly in Kyrgyz, in which case, a translator assisted with the conversations. These interviews generally consisted of semi-structured discussions between 30 minutes and one hour, followed by an informal, non-structured discussion over tea and bread under the invitation of the informant. The author also observed three 'self-help group' meetings with the residents organised by a local NGO and was taken on various walking tours of the settlements by the residents. As well as interviews, the author reviewed local press during and after each field visit as a means of keeping up to date with the changes unfolding over time in relation to the legalisation and infrastructural issues of the settlements, which featured frequently in local newspapers.

'Illegality' between 1989 and 2010

Estimates vary over the number of residents living in Bishkek's informal settlements. The Mayor's Office suggests 260,000, which includes 48 settlements that form Bishkek's peripheral ring (Mayor of Bishkek, 2012). The living standards and appearance vary between these 48 settlements.

The more established settlements, first developed in the early 1990s, now generally have access to electricity and water while some of the settlements established in 2005 remain illegal and with varying access to basic services.[70] The variety in the settlements has led one Bishkek-based urban planner to challenge the figure of 48 and suggest the actual total is half as much given the age and development of some settlements with some effectively merging with the rest of the 'planned' city.[71] The higher amount of settlements quoted in the newspaper press is often couched within debates on increasing crime in the city, the uncontrolled expansion of such settlements, and the wider political instability of the country, especially after the more recently established settlements developed during the aftermath of the 2005 Revolution (Nasritdinov et al., 2012). Many Bishkek 'old timers' ('*starozhily*' in Russian*)* also blame the residents of such settlements for the widespread violence and looting that occurred during the 2010 events in the city which had more severe repercussions in the south of the country (Reeves, 2010).[72]

Three main events mark the growth of the informal and illegal areas of Bishkek. First, as the promises of the ailing socialist state continually failed to materialise in relation to housing, and *glasnost* ('openness') reduced restrictions on nascent civil society movements, political groups such as *Ashar* (meaning 'goodwill', in Kyrgyz) began to form. The first 'informal' settlements were established shortly after the group organised protests in May 1989 on empty plots of land on the outskirts of Bishkek (Interview 1). The protests were designed to attract the attention of the government to the problems faced by young, notably ethnic Kyrgyz, adults, and especially migrants who had come to study in the city and wished to remain there afterwards. Following ongoing protests, the Soviet City Administration eventually agreed to the distribution of land on the outskirts of the city and established a system to implement this. Four settlements (*novostroikas)* were initially established followed by two more the following year. After the distribution of the land, the new landowners began to lobby for loans to purchase materials and equipment to construct their housing, which was later honoured by the socialist administration (Interview 2).

Santos (2002, 473) notes in his notion of 'interlegality' that "the conception of different legal spaces [is] superimposed, interpenetrated and mixed in our minds, as much as in our actions." Flynn and Kosmarskaya (2012)

[70] In the context of the settlements on the outskirts of Bishkek (*novostroikas*), I make a distinction between 'informal' and 'illegal' depending on the settlement's individual relationship with the state. The majority of these settlements are 'informal' meaning that they are officially recognised by the state and form part of the administrative area of the city. 'Illegal' means that the settlement is not officially recognised by the state. Often these settlements are also located outside of the official city boundary in neighbouring Chui *oblast* (province).
[71] From a personal discussion in 2013.
[72] Here I am referring to the violent events in the south of the country between ethnic Uzbeks and Kyrgyz (see Megoran, 2013). This is outside the scope of this paper.

highlight in their study on internal migration to Bishkek that the residents of the *novostroikas* are often associated with illegality. In commenting on the establishment of these settlements one of their respondents said: "[i]t is wrong to arrive somewhere and simply take the land, it has to be done another way. That is why we don't like them – they are fraudsters" (Flynn and Kosmarskaya, 2012 p. 463). Contrary to this popular opinion from residents who grew up and have lived in Bishkek for a long time, the original protestors of the *Ashar* movement emphasise that the first settlements formed on the outskirts of the city were not established 'illegally' or 'outside' the frame of the state. Instead, the settlements developed within the state's legal apparatus: land was divided and distributed to the protestors by the state through an organised procedure. The settlements were then later officially legalised by the state granting decrees for each specific settlement (Interview 1 and 2).

The Soviet Union collapsed shortly after the *Ashar* movement had begun and the state had finally started to respond to the housing needs of the Kyrgyz in Bishkek by distributing land plots to them. The collapse of the Soviet Union marks the second period of growth of the informal settlements. The country's independence in 1991 and the introduction of economic shock therapy shifted the housing crisis in Bishkek from being urban-led to a more migratory character (Parkinson and Talipova, 2005). Notably, the population of Bishkek increased by 151,000 between 1989 – 1999 as a result of internal migration, although 89,000 people left the city during the same period as a result of international migration (Schuler, 2007). As farming and other industries collapsed in the rural areas owing to the removal of central budgeting mechanisms, and strictly enforced migration controls were relaxed, more internal migrants began to move to the capital. This coincides with the introduction of a free land market throughout the country following a constitutional amendment that converted fixed period land use rights into legal ownership documents (Steimann, 2011). The government continued to grant land plots to those in need during this period but land was also 'illegally' seized. The 1999 Land Code initiated the free allocation of public land for Kyrgyz citizens for individual housing construction (Article 32), yet the allocation of such land was, and continues to be, mired by a high perception of corruption as procedures are heavily bureaucratic and lack transparency. Frustrations with the lack of transparency in the land allocation system therefore led citizens to take manners in their own hands by squatting land.[73]

The Tulip Revolution in 2005 marked the third major growth period of settlements in Bishkek and also reflects a turning point when the successive government refused to legalise some of the settlements established shortly

[73] See Sanghera and Satybaldieva (2012) on moral justification of land claims in Kyrgyzstan.

after the unrest. The Tulip Revolution emerged following the presidential elections held on 27 February 2005, which later saw large demonstrations break out in Bishkek as masses of people gathered in the city's central square, Ala-Too, and demanded the resignation of President Askar Akayev (Marat 2006).[74] Following Akayev's eventual resignation, an interim government officially took control of the country, but a period of unrest continued in the capital which resulted in groups of individuals seizing plots of land around the city boundary and demanding ownership rights.[75] Many of the informants I spoke to in Bishkek, residents of settlements and local NGO workers, noted that Bakiyev had promised land to people from the south during his election campaign prior to the March unrest. While decrees were subsequently issued after the land seizures by Bakiyev in order to legalise the land, these were later revoked for some settlements, including Ak Jar, when it became apparent that the significant areas of the squatted land had previously been declared unsuitable for property construction (Interview 2).

In the next section, the article focuses specifically on the settlement of Ak Jar. Through this case study, an emphasis is placed on the emerging relationship between the 'state' and the residents of the 'illegal' settlement, which, aims, in turn, to destabilise the nature of such categories.

3. Ak Jar and the process of (il)legalisation

The gradual legalisation process of Ak Jar is explored by drawing on four different 'events' first, to destabilise binaries that connect the state to legality and second, highlight changes in the 'illegal' status of the settlement over time through its interactions with the state. Before turning to these events, literature is introduced from anthropology, which breaks down the 'imagined' notion of the state as a unified agent acting 'above' society.

The state from 'below'

Examining the internal plurality of the state (Santos, 2002) shifts attention from conceptualisations of the state as a closed and coherent law making institution and opens up analysis for exploring the various range of state and non-state actors that are involved in legal processes through different state institutions. Unpacking the state and dis-entangling it from law or

[74] The 'Tulip Revolution' refers to a series of 'coloured' revolutions in post-socialist space including the Rose Revolution in Georgia in 2003 and the Orange Revolution in the Ukraine between 2004 and 2005. See Ó Beachain (2009, 3333) on the Tulip Revolution, who notes: "Rather than being a revolution brought about by a strong opposition, it is arguable that what happened was simply the collapse of rotten state institutions".
[75] One report estimates 30,000 "rural dwellers" seized land on the edge of the city (Marat, 2006).

legality – what Santos (2002) describes as a post-modern understanding of the law – destabilises neat distinctions made between the state/law/formality and non-state/illegal/informality (Rajagopal, 2008). Instead, the fragility and partiality of the state and its involvement with law making is examined "as an aspect of more complex power relations" (Mitchell, 1991, 77). Thus, the relationship between state and law is negotiated, shaped, and reshaped through ambiguous processes and complex dynamics.

Breaking down the relationship between the state and law and, in particular, legality, involves challenging notions of the state as a vertically encompassing entity above society (Ferguson and Gupta, 2002). This verticality takes the state as a single agent or institution somehow 'above' society while encompassment highlights how the state is located within "an ever widening series of circles" stretching across multiple scales of the family, community, and up to the system of nation-states (Ferguson and Gupta, 2002 p.982). Challenging this 'imagination' of the state therefore asserts power – and, in the context of this article, power over the law making process – as 'disaggregated' thus enabling the examination of 'non-state' individuals and institutions (Sharma and Gupta, 2006; c.f. Foucault, 1991). An ethnographic understanding of the state by examining its existence at the local level in "local manifestations of bureaucracy and law" therefore leads, in turn, "to a more spatially and conceptually dispersed picture of what the state is" (Das and Poole, 2004 p. 5).

While recent studies in anthropology call for an abandonment of the image of the state as a "free-standing agent issuing orders," there is a need, however, to reassert, what Mitchell (1991, p. 93, author's emphasis) refers to as the "traditional figure of resistance" the "subject who stands *outside* the state and refuses its demands." This is especially important in emphasising the material legal institutions of the state. Thus, while the de-centring of the state as a single agent is important, it is "still basically identifiable through the state's affiliations with particular institutional forms" (Das and Poole, 2004, p. 5).

An ethnographic understanding of the state is important in destabilising artificial divisions between illegal and legal which present the two categories as closed, static and pre-determined (Cooper, 1996; Heyman, 1999). Illegality is often understood as a single act which has crossed the constructed and pre-given border from legality. Moreover, individuals and social groups are stigmatised and associated with illegality even when 'illegal' acts are absent or when the social group being stigmatised may not

associate themselves with forms of illegality.[76] Such actors or activities are therefore not inherently legal or illegal, but rather "'legalised' or 'illegalised' within specific contexts of power and politics" (Thomas and Galemba, 2013, p. 212).

Background to Ak Jar

Ak Jar was established in 2005 shortly after the Tulip Revolution. In September 2013 it was still 'illegal' and accordingly, no presidential decree had been granted annexing the settlement to the Municipality of Bishkek. The settlement occupies a total land area of 120 hectares, lying adjacent to, but outside, the city's boundary. The settlement covers a long and narrow plot approximately two kilometres in length and varying between two hundred and five hundred metres wide at different points. A central street runs the entire length of the settlement serving as a busy thoroughfare for *mashrutkas* (privately operated minibuses that are the main form of transport in the city), and is dotted with the occasional shop selling everyday convenience products such as fruit and vegetables (Figure 4). Forty-one smaller side-streets branch-off from the central street with approximately ten to fifteen houses on each (Figure 5).[77] The settlement adjoins several other more established settlements that have since been legalised, including Ak Bata, Kelechek and Dordoy, where service provisions such as schools and health care are respectively more available. As well as the neighbouring settlements, Ak Jar is a short walk away from one of Kyrgyzstan's and Central Asia's largest trading points, the Dordoy market, which serves as the main employer for many of the residents of Ak Jar who often take on lower paid jobs such as loaders, barbers or taxi drivers, with the latter using the market as a pick-up point for passengers and goods.

The population of Ak Jar is growing rapidly. One of the *kvartal'nyi*,[78] who is responsible for registering new arrivals in the settlement, estimated that approximately one new family is arriving at the settlement everyday (Interview 8). Reasons for moving to the settlement, and the city more generally, are not solely linked to employment, although this was a frequent theme that arose during the interviews. Other reasons include medical purposes, as the provision of health care is more extensive in the city than in other areas of the country. Educational reasons were also noted with links made to the better schools in the city and its many universities

[76] I am grateful to one of the anonymous reviewers who suggested this point.
[77] This is an estimate based on the observation of fully constructed properties during a walking tour of the settlement in 2011 and does not include individual land plots either with no or only partially constructed properties.
[78] An individual responsible for dealing with administrative matters in the settlement.

(Hatcher and Balybaeva, 2013). Additionally, many of the residents had previously rented property in Bishkek prior to moving to Ak Jar but as one respondent noted in echoing others, "we just wanted to have our own land and house, so our children could play in the yard on their own" (Interview 5). Land was seen as a more secure alternative to renting property. The cheaper price of land in Ak Jar in comparison to the rest of the city and its surrounding areas was also emphasised by several respondents. As Roy (2005, p.149) notes, "informal housing is a distinctive type of market where affordability accrues through the absence of formal planning and regulations." Ak Jar therefore offered land that was not only affordable for the residents, who often came from poorer rural areas of the country, but also at a location close to the city's Dordoi bazaar, an important local employer for many internal migrants in the city.

Figure 4: The main street of Ak Jar recently resurfaced following the allocation of funds from the federal budget (Hatcher, 2013).

Illegal-legal beginnings (1996)

Following the political movement by *Ashar* in the late 1980s, the land on which Ak Jar stands today was transferred in 1989 from Alamudin District Administration to the Frunze City Executive[79] for land distribution to those individuals in need.[80] Unlike other areas of land transferred, it later became apparent that this area of land is unsuitable for property construction (Interview 3). A *spravka* (certificate) from the Academy of Sciences from

[79] Bishkek was called Frunze until Kyrgyzstan's independence in 1991.
[80] Government resolution (*postanovlenie*) of the Soviet Kyrgyz Republic, 12 July 1989 No, 213.

the Soviet period declared that the land was unsuitable for residential buildings (Interview 3). Original proposals to ease the city's housing shortage by granting land plots on this specific piece of land were therefore abandoned and at the end of the 1990s the residents who had already moved there were relocated to another area of Bishkek.

An agreement was therefore made to transfer the land back from the City Executive to Alamudin District Council on 3 August 1996 but the original transfer document was not executed until 1 December 1997 (Interview 3), at which point the land became the responsibility of Leninskii village *ayil ökmötü* (village government) which was part of Alamudin District.[81] Prior to the execution of the transfer document, Alamudin District Council granted a 49-year lease to a private holding company, owned by a local Member of Parliament (Interview 4). At this point, however, the District Council had no legal power to transfer the land to the private company as it was still under control of the City Executive. In 2011, this resulted in a court case in order to determine whether the legal owner of the land was the local Member of Parliament or the local district council. It was these initial, legally uncertain, transfers between different state administrations and a private body that complicated the subsequent status of the settlement after it was 'squatted' and the residents began to construct properties on the land in 2005, as illustrated in the next section.

Figure 5: One of the side streets of Ak Jar with new electricity lines (Hatcher, 2013).

[81] The *ayil ökmötü* is responsible for renting community land and pastures to local individuals and issuing pensions and social allowances.

Land mafia and the 'illegal state' (2005)

Although media reports suggest a chaotic seizure of land on the outskirts of the city, the residents of the settlement explained how they purchased plots through an organised system of 'land leaders'. The backgrounds of the individuals who sold the land to the existing residents are a source of confusion and contestation both within the Ak Jar community as well as with local NGOs and interest groups. One resident connected the land leaders to individuals arriving from the south following promises of land made by the new President Bakiyev:

> "We bought the land from the land leaders … there were land leaders owning a few streets each and then they were selling the land on these streets. The land leaders were mainly from the south [of Kyrgyzstan] and came here following the former president [Bakiyev]. They came to own this land by force." (Interview 6)

This was at a time of suspended political power in Kyrgyzstan that followed the unrest of the 2005 Revolution. In the aftermath of the 2005 unrest, individuals, who are often linked to the protests that eventually saw the ousting on Akayev, began to 'grab' land on the outskirts of the city as a form of 'pay back' from Bakiyev. This 'pay back' was earned from their support in bringing Bakiyev to power (International Crisis Group, 2005). At the time, Bakiyev, then as interim President, did little to curb the land squatting. The individuals who had 'grabbed' the land then sold individual parcels to the present residents of the settlement.

Another resident of Ak Jar said that these land leaders were connected to the local Member of Parliament who owned the private holding company and was believed to be the original 'owner' of the land:

> "[The Member of Parliament] was encouraging people to build their own houses and purchase the land … if he were against it, he wouldn't have allowed the people to own the land and build houses … he could have called the *Militia* [police] here and sent people back to where they came from. But he didn't do that! On the contrary, he encouraged more people to come to Ak Jar!" (Interview 7)

The Member of Parliament later began to demand money from the residents for the land, claiming he was the 'legal' owner according to the land transfer of the mid-1990s. It was these demands for money from the residents, and the general confusion over ownership of the land, that resulted in the court case between the Member of Parliament and Alamudin District Council in 2011 (Interview 2).

The selling of land beyond the legal frame of the state by 'land leaders' in Kyrgyzstan is also linked to state actors acting illicitly on behalf of state institutions, what Schneider and Schneider (1999) refer to as "deviant pieces of the state". As Nasritdinov et al. (2012) note, after the establishment of earlier settlements towards the mid-1990s, some members of local state administrations realised that selling land could become a lucrative business and formed a 'land mafia'. Brokers connected members of the local administrations with community leaders ('*top bashy*') from other regions of the country, who would then sell plots to internal migrants, and often the same plot to more than one buyer. An Ak Jar resident noted that these land leaders occupied individual side-streets within the settlement and distributed land plots to individuals: "Land leaders often sold the land to one family who would not use the land for say, a year or so, so they sold the land again and the land still remain unused, they would sell it again" (Interview 8).

In any case, the residents interviewed emphasised how they bought the land from the 'land leaders' in good faith with the verbal agreement that property documents would be handed over to them at a later date (Interviews 5 and 9). Another resident also said that the 'land leader' she was involved with promised the connection of electricity within three months (Interview 10). At the time of the research, the residents noted that the land leaders had since disappeared and they had no idea of their whereabouts.

The multiple sale of land plots has resulted in over 350 ongoing land disputes in Ak Jar today. The settlement's recent connection to electricity and water, with the assistance of the state, has made everyday living in the settlement a little easier for the residents. At the same time, this has, in turn, resulted in multiple families returning either to live on the land or to sell their plot now that land prices have risen. A *kvartal'nyi* explained that a system is in process to resolve such land conflicts, whereby the appropriate *kvartal'nyi* approaches the neighbours of the surrounding land and asks them if the alleged owner had been here before and 'looked after' their land. If this procedure still does not resolve the issue, the case goes to a land commission operating internally within the settlement. This land commission is constituted of a group of older and respected residents, (*Aksakal* or 'white beards' in Kyrgyz) who decide on certain cases. Aksakal courts operate throughout Kyrgyzstan, and reinforce the internal plurality of state law. In 1993, the apparent authority of the elders and their customary law, which functioned largely in the rural areas of Kyrgyzstan, was formalised by establishing the Aksakal courts (Beyer, 2014). Today, these courts are also present in urban areas and settle 'localised' disputes such as land, family and property issues (Interview 11). Here, the *kvartal'nyi*

is referring to an 'informal' Aksakal court within Ak Jar, which operates outside of the structure of the local judicial institutions of the *aiyl ökmötü.*

Between April and July 2011, during the author's second field visit to Kyrgyzstan, the settlement had neither running water nor electricity. Although pylons had been erected in anticipation of electricity, at the time, these stood disconnected, without any cables. The blocking of the main road in August was not just in protest over their poor living conditions but also in relation to the infrastructural improvements undertaken in other settlements. Some of these settlement had also been established through land 'squatting', in a similar manner to how Ak Jar was established, yet had since been legalised by a Presidential decree. This legalisation resulted in their subsequent inclusion in the 'Bishkek and Osh Infrastructural Improvement Project' funded by the World Bank (World Bank, 2008). The project included water installation and re-surfacing of the main roads in the settlements. As the chairman of one local NGO noted, a 'political decision' was therefore made to pacify the population of Ak Jar: "they [the government] were afraid there would be another big protest and perhaps something worse," the latter referring to the unrest in 2005 and 2010 (Interview 11). Accordingly, 36 million Kyrgyz Som (740,000 USD) was distributed from the federal budget by a protocol appointment in 2011, thus bypassing normal local budgeting regulations. The settlement was subsequently connected to electricity and later a water pipe was laid along the central street with 15 standing taps. Residents later began to extend these water pipes, through their own financing and labour, to their individual houses and now approximately 70 per cent of houses in the settlement have a water connection to their own property (Interview 8). Additionally, in 2013, the government recruited two nurses and a doctor to work in the health clinic of a neighbouring settlement solely for the medical needs of the Ak Jar residents.

As Roy (2005) notes, "state power is reproduced through the capacity to construct and reconstruct categories of legitimacy and illegitimacy." In the case of Ak Jar, the residents are reproducing and redirecting state power through their own political authority. Therefore, as Smart (1999, pg. 100) notes, "the state at a particular time and space is the product of bargains and disputes between all relevant agents, both within the state and those officially not its agents." This ability of the residents to call on the state despite their 'illegality' not only draws on the state's heterogeneous qualities, through its reproduction by non-state agents, but also its encounters with this 'illegality' de-stabilises the binary between state and legality (Cooper, 1996; Rajagopal, 2008).

Despite these developments in infrastructure and service provision, the legalisation of Ak Jar continues to remain in doubt. In the meantime, the government has come under critique from the local press and the more long-term residents of Bishkek (c.f. Sorokina, 2013). It is well known that the settlement is built on soft clay unsuitable for property construction, which could be particularly dangerous in the event of an earthquake. A further 211 properties stand on a gas pipeline covering the first eight side streets of the settlement while an additional nine houses were built on high-pressure electro-transmission areas (Interview 8). Critics have therefore argued that not only were these settlements initially illegally occupied, but also the construction of houses could be dangerous in the event of an earthquake (Interview 2).[82] The continuing expenditure of money from the federal budget on land that is unlikely to be legalised is an ongoing and heated political discussion between different government officials and long-term Bishkek residents (Sorokina, 2013).

One *kvartal'nyi* noted that an internal division had been created largely between those residents living over the gas pipeline and those who do not. In an effort to legalise the settlement, the residents collected a substantial sum of money and commissioned a private architect to draft a General Plan. The Plan was submitted to a department of the Ministry for Construction for approval and to initiate the process of incorporating the settlement to the master plan of Bishkek. The residents organising the plan did not include the properties lying on the gas pipeline nor those built on the electro-transmission area, thus creating the internal division between the residents. The residents, as 'non-state' agents, were therefore 'mimicking' the official procedures of the state (Das and Poole, 2004) required for the legalisation process, while also recognising a boundary between legal and illegal that they could not negotiate: the residents living on unsuitable land for construction were therefore removed from the process.

In 2013, the legalisation process had reached institutional stalemate. The resident's demand for legalisation through procuring their own plan had led institutions to pass responsibility from one to the other. The problem remained that Ak Jar was still administratively part of an *aiyl ökmötü* outside of the city boundaries which was fiscally constrained in providing infrastructure for the settlement and would likely cause tension between the other residents of the village living in legalised areas (Interview 4).

[82] The United Nations Office for the Coordination of Humanitarian Affairs (2014) note that Kyrgyzstan is classified as the most seismically dangerous country in Central Asia, with the potential of an earthquake reaching a magnitude of 8 or 9 on the Richter scale.

Alamudin District Council confirmed in an interview that they were willing to transfer the land to Bishkek's control but would not take responsibility for the settlement because the land had been occupied illegally and legalising the properties would be unfair for other residents of the district who were currently on the waiting list for land. The Mayor of Bishkek said that they would agree to the land transfer from Alamudin once the housing constructions had been formalised and each individual owner had been determined, a task the District Council has refused to do so far. The Ministry of Construction also refused to incorporate the plan of the settlement to the city's Master Plan, citing the dangerous nature of the properties, particularly in the event of an earthquake.

Conclusions

In grounding law in its historical and geographical context it becomes clearer why the state intervened with the illegal settlement of Ak Jar. First, and most importantly, the residents began to protest and make demands on the state at a politically uncertain and volatile time. The first protest in the summer of 2010 was held only months after the violent unrest in the capital and days before ethnic clashes in the south of the country. Following the second protest in 2011, the government was aware that the unrest could spread to other parts of the city and escalate to a more violent and damaging level. The state therefore needed to satisfy the demands of the residents by improving the infrastructure of the settlement in order to prevent a potential uprising similar to the events in 2005 and 2010.

Second, the legalised settlements in the city were also receiving considerable infrastructural investment through a World Bank funded project creating a material and social disparity between the residents of Ak Jar and the other settlements. Again, this could lead to wider unrest in the city, especially as some of these settlements (although, not all of them, contrary to common opinion in the city) were also established through illegal land seizures but were then later legalised by the state. For the residents of Ak Jar, it was difficult to see how their settlement labeled as 'illegal' (c.f. Thomas and Galemba, 2013) differed from these other 'legal' settlements in terms of development, especially as they believed they had bought the land in good faith either from agents of the 'state', individuals associated with Bakiyev, or the alleged private owner of the land.

The growing relationship between the 'state' and the residents over time, and particularly after the unrest in 2010, destablises top down conceptions of the state and the categorisation of 'illegal'. The demands of the

residents brought the state and illegality together in the settlement creating an interstitial space in between legal and illegal. This represents a 'becoming' of legal space emphasised by the state's interaction with the residents and also by the residents appropriating legal enactments of the state through the act of organising their own plan of the settlement.

Rather than characterising the 'legal' as static and pre-given in studies on law and geography, scholars researching law and space should consider the processes of law making as a more nuanced means of understanding productions of illegal (or legal) space. In doing so, an emphasis is placed on the 'doing' – or what Blomley (2006) would refer to as 'splicing' – of spatio-legal contexts. These spatial and legal interconnections are a result of hegemonic orders embedded in wider power relations that are fractured and therefore potentially open to contestation, change and transformation. Examining the process of law making depends on a reinterpretation of the relationship between the state and legality by examining the former from 'below' as a disaggregated power structure. In acknowledging law as a 'critical manifestation of state power' (Blomley 2008, 156) it is crucial to understand the role of different agents – across the fuzzy divide of state and non-state – in the law making process and the production of illegal space.

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Interview 10: resident of Ak Jar, May 2011

Interview 11: employee of social research organisation, June 2012

Interview 12: chairman of local NGO, September 2013

Paper IV:
Assembling legality on the urban periphery

Hatcher, C. Assembling legality: the material politics of a 'squatter' settlement on the urban periphery

Submitted to: Environment and Planning D: Society and Space

Assembling legality: the material politics of a squatter settlement on the urban periphery

This paper explores the legalisation process of a 'squatter' settlement on the outskirts of the city of Bishkek, Kyrgyzstan. In shifting 'static' and 'fixed' notions of (il)legal space towards a more dynamic and performative understanding, an emphasis is placed on the temporalities and processes of producing the 'legal'. By drawing on wider debates in legal geography that emphasise the mobile and fluid nature of law, the concept of assemblage is used to examine the temporal dynamics of (il)legal space through the assembling of different material and non-material components. It is argued that exploring the gradual and incremental assembling of the legal assists with a better understanding of 'illegality' on the urban periphery and non-anthropocentric reasons behind processes of urban marginalisation. The process of law making is therefore understood through the distributed agency of the different components that form the assemblage, and how these align and diverge over time.

Key words: *law, illegal, assemblage, time, materiality, squatter settlement.*

1. Introduction

Sitting in a dusty office not far from one of Bishkek's main streets one afternoon in September 2013, I am interviewing the head of a planning department, a separate division of the Kyrgyz Ministry of Construction, about the legalisation of a 'squatter' settlement on the outskirts of the city. Although now appearing less annoyed than when I first arrived, he remains visibly agitated. Deflecting one of my questions, he directly addresses my research assistant: "why does everyone keep on coming to me about this settlement?" He asks, frustrated. Without time for my research assistant to reply, he pulls a folder down from a nearby shelf, quickly flicks through it, and points to an official-looking document inside. "There is nothing I can do!" he says. "The land simply isn't safe: it's dangerous to build there!" "And what's more," he continues, "some of them [the residents] have built above a gas pipeline!" he shouts, increasingly exasperated.

Several individuals, including the residents of the 'squatter' settlement, led me to the head of the planning department that afternoon. The residents and employees of the local administration where the 'squatter' settlement is located emphasised that the head of the department was responsible for holding back the legalisation process of the settlement. I wanted to understand how one individual was somehow perceived as preventing the legalisation of the settlement. It became apparent, however, that the legalisation process was not solely under the control of the head of the

planning department, neither did it rest with the local government administration where the settlement is located nor other institutions such as the Ministry of Justice. Rather, material components – the soft clay, the gas pipeline that runs underneath a part of the settlement, and the electro-transmission cables – were also important agents in holding back the legalisation process.

In unpacking the 'illegal' status of the settlement, I therefore use assemblage as an analytical tool for understanding how 'illegality' (or 'legality') is part of an ongoing process of different material and non-material components aligning over time through unequal power relations (McFarlane, 2011a). In doing so, I aim to examine how 'illegality' and the associated marginalisation of the residents living in the settlement is constructed not only through human enactment but also simultaneously through the alignment of material components over time. Thus, the converging of these material and non-material components emphasises the distributed agency (Bennett, 2005) of the (il)legal assemblage with different actors playing a greater role at certain times than others. Assemblage is therefore foregrounded in this paper in thinking through illegality and particularly in highlighting the material agents involved in law making processes (Latour, 2010).

In emphasising the importance of material components in the production of illegality, I argue that developing an understanding of how complex socio-material elements fit together (or fall apart) assists with uncovering reasons behind the marginalisation of urban groups that go beyond anthropocentric concerns (Whatmore, 2006). This paper aims to therefore present a more nuanced and performative understanding of 'illegality,' through an examination of the various material and non-material agents and their role in the production of marginal urban space (c.f. Blomley, 2013). As Datta (2013, 522) notes, "the cultural and political contexts in which law is encountered and negotiated produce highly localised and contradictory understandings and rights and entitlements among the poor." Thus, through an empirical inquiry, the analytical lens of assemblage destabilises the meaning of reified terms such as 'illegality' and examines how law works in everyday settings through different power struggles. An emphasis is therefore placed on the process of law making and the assembling of different 'legalising elements' rather than examining the resultant formation of 'illegality' (Li, 2007).

In the section that follows, I introduce the events that unfolded in Bishkek in March 2005 and led to the 'territorialisation' of the illegal settlement that forms the empirical case study for this thesis. The next section provides a more conceptual understanding of assemblage and links this to

studies in legal geography, which emphasise the mobile and temporal nature of law, thus disrupting unitary and closed interpretations (Benda-Beckmann and Benda-Beckmann, 2014). I then return to Bishkek again, and specifically the settlement of Ak Jar, to develop the different components that assembled and also dis-assembled during the duration of my field research. In the final section, I discuss this assembling and dis-assembling by examining the relation between the material and non-material components, the distributed agency across these components, and how this distributed agency varies temporally as it fades in and fades out at different times.

2. Assembling illegality on Bishkek's urban periphery

McFarlane (2011a) notes that an assemblage, in relation to the city, is understood to be the gathering and emergence of materials, social relations, cultures, capitals and ecologies that align over time and through unequal power relations. To use assemblage is therefore to view social entities such as an electric power grid (Bennett, 2005), neoliberalism (Ong and Collier, 2005) and urban policies (McCann et al., 2013) as being formed through the relational configuration of heterogeneous components. This section begins the examination of the different heterogeneous elements that resulted in the emergence of illegality on Bishkek's urban periphery. I first discuss the political unrest that unfolded in the city in 2005 and the subsequent power vacuum that resulted following the ousting of President Askar Akayev. This political upheaval in the city, and the country more widely, is linked to the land 'grabbing' that unfolded on the urban periphery shortly after the unrest and led to the establishment (and labelling of 'illegal') of Ak Jar discussed in the following section.

Revolution and 'land grabbing'

After a night of looting and unrest in Bishkek and other smaller cities, on the morning of 25 March 2005, Kyrgyzstan woke to a new acting president following the ousting of Askar Akayev. The unrest, labelled also by Akayev himself, as the 'Tulip Revolution', was a rare occurrence in the Central Asian region where the newly independent states have gradually come to be shaped by largely authoritarian regimes following the collapse of the Soviet Union (Rasanayagam, et al., 2014).[83] After a simmering period of dissent in relation to Akayev's increasingly 'clan'-style form of governance, where he put the interests of his own family and relatives above the

[83] The 'Tulip' Revolution follows a series of 'coloured' revolutions in post-Soviet space, including the Rose Revolution in Georgia (2003) and the Orange Revolution in the Ukraine (2004).

interests of the state and routinely imprisoned the opposition and curtailed press-freedom, Akayev fled to Moscow leaving a new interim president, Kurmanbek Bakiyev, to take control of the country (Collins, 2006).

Bakiyev, originally from the southern *oblast'* (province) of Jalal-Abad, was set to re-draw the geopolitical split between the northern (where Bishkek is located) and southern regions. Akayev had bolstered the divide during his presidency through the appointment of northerners from his own 'clan' to important political seats in the south (Reeves, 2010). This led to the southerners feeling increasingly disadvantaged and politically under-represented. Internal migration from these southern regions to Bishkek, often in search of employment and a better standard of living, increased during the later years of Akayev's rule leading this north-south divide to spatially unfold within the city and the surrounding districts (Flynn and Kosmarskaya, 2012). These newcomers (*priezzhie*) who were typically living in rented accommodation in the surrounding areas of Bishkek, as well as individuals who were transported to the capital by bus by the opposition, are often linked to the unrest that unfolded in the capital in March 2005 (International Crisis Group, 2005).

Within weeks of the unrest, 'land grabbers' (*zakhvatchiki*, in Russian) began to seize land on the outskirts of the city and started to demarcate plots for themselves or to sell onto other individuals. Reasons for the land seizures revolve around a mixture of alleged 'promises' of land that Bakiyev, running in opposition to Akayev, had made to voters coming from the south during the run up to the presidential election of February 2005, as well as a form of 'pay-back' or 'reward' from Bakiyev for those who had participated in the Revolution which brought him to power. As Reeves (2014) notes, it was the 'Revolution' that, for some, made the seizures of land legitimate. As a protestor (IRIN, 2005) interviewed by one local newspaper at the time noted: 'this is the land of the 'people' and everybody has a right to it … we overthrew Akayev and we are entitled to be rewarded for that.'

Bakiyev therefore did little to curb the 'land grabbing' on the outskirts of the city, apart from proclaiming, during a media interview, that the actions of the 'grabbers' were 'threatening' to destabilise the country (IRIN, 2005). Moreover, months later, the government began to officially distribute land on the outskirts of the city, and other settlements were retrospectively legalised (Sanghera and Satybaldieva, 2012). Bakiyev also made an official request to the World Bank for support improving the infrastructure of these new settlements, which eventually led to the 'Bishkek and Osh Infrastructure Project' implemented through a local NGO (World Bank, 2008). Some, and specifically, Ak Jar, the settlement discussed in this paper, remain illegal for reasons explored further below. In the next

section, I draw on conceptual understandings of law as mobile and temporal before linking this interpretation to assemblage in order to emphasise the process, performance, and gradual alignment of 'legality' over time and thus destabilise understandings of law and legal space as fixed and static.

3. Mobile assemblages of law

In moving away from liberal conceptions, and particularly the boundary between 'legal' and 'illegal' as static, studies in legal geography attempt to develop a flexible and more mobile conception of law (c.f. Blomley, 2011; Benda-Beckmann and Benda-Beckmann, 2014). Legal geography therefore understands law as socially and spatially constituted and therefore aims to destabilise liberal discursive and rhetorical notions of law that purport its closure and separation from society (Barkan, 2011). Instead, legal geography highlights that "there is no such thing as 'the law' … [r]ather legal constitutivity can be observed through the practical activities of situated social actors" (Delaney, 2014, 3). By drawing on assemblage, this section aims to expand on this constituted understanding of law by also emphasising its engagement with materiality (Braverman, 2009; Latour, 2010).

Temporalities of legal space

Recent studies in legal geography have become concerned with examining the temporality of legal space by emphasising its liminality and how these spaces 'fade in' and 'fade out' (Benda-Beckmann and Benda-Beckmann, 2014) and how old laws are continually performed and enacted in everyday practices despite changes in official law (Valverde, 2012). As Thelen (2006) notes in the context of post-socialist reforms in former Eastern Germany, regardless of the adoption of an entirely new legal system from the West, individual's still employ social practices and norms which have transformed what was 'state law' in the former GDR to a type of 'customary law' in a unified Germany. Thus, law endures and lingers beyond its official repeal (Benda-Beckmann and Benda-Beckmann, 2014). Moreover, law 'fades in' through practice prior to its official enactments as expected provisions of international or European law are pre-empted by domestic legal systems (Harboe-Knudson, 2012). In some cases, the law is also officially re-instated again following political change, as Maandi (2009) illustrates in the case of Estonian landowners maintaining their pre-Soviet land rights throughout the Soviet period by using different material markers and reference points

until these rights were reinstated again following the collapse of the Soviet Union. Thus, while legal orderings were suspended, for what was an indefinite amount of time, a material enactment of these laws was maintained.

These lingering, fading and enduring aspects of the temporality of law also draw on its mobile qualities (c.f. Hannam et al., 2006; Cresswell, 2006). Laws become embedded within globalising processes 'under conditions of accelerating people, capital, technology, communication and knowledge' (Benda-Beckmann et al., 2005, 1). These mobile conceptions of law are far from new. The transfer of legal systems to settler states during colonisation reflects historical mobilities of the law that still remain evident and important in a more contemporary setting (Kedar, 2014). The transnational qualities of the law resemble a growing body of research on 'urban policy mobilities' whereby 'socially produced and circulated forms of knowledge … develop in, are conditioned by, travel through, connect, and shape various spatial scales, networks, politics, communities and institutional contexts' (McCann, 2011, 109). In a similar way, the 'law' develops through global processes that become incorporated into or 'fixed' within domestic legislation, although in locally embedded contexts these often reveal a much more 'mutated' form (c.f. Golubchikov and Phelps, 2011).

Mobile legal assemblages

Assemblage offers a useful conceptual tool for examining the liminal and enduring aspects of legal space. Anderson and McFarlane (2011, 124) note that the term assemblage "is often used to emphasise emergence, multiplicity and indeterminacy, and connects to a wider redefinition of the socio-spatial in terms of the composition of diverse elements into some form of provisional socio-spatial formation." Assemblage is therefore useful for exploring constructions of 'illegality' on the urban periphery of Bishkek through its emphasis on multiple, socio-spatial components. Moreover, it is this indeterminate and the provisory character of the assemblage that becomes especially important in examining illegality and the production of illegal space. Assemblage emphasises the provisional and liminal aspects of illegal space and develops an "analytical gaze from end products to agents in the transient crystallisation of a longer process" (Harman, 2008, 373). Assemblage particularly emphasises the mobile and fluid properties of law and law making, which become stretched spatially and temporally. As McFarlane (2011a, 655) writes, "[e]lements are drawn together at a particular conjecture only to disperse or realign". Therefore, in understanding the 'fading in' and 'fading out' of legal space, assemblage

acts as a conceptual tool for determining the role of different constituents in these temporalities.

Thinking with assemblage provides a conceptual lens to analyse the forgotten material constituents of law. Legal geography has already focussed on material aspects of the law through an examination of its spatial enactments (e.g. Delaney, 2006). Here, however, I am more specifically referring to those non-human elements and their involvement in productions of law and legal space. Latour's (2010, 71) recently translated ethnographic study of the *Counseil d'Etat* in Paris, for example, traces the 'making' of the law through the 'stamps, elastic bands, paper clips and other office paraphernalia which are indispensable tools of cases'. Moreover, Braverman's (2009) study on treescaping practices as 'lawfare' in Israel and Occupied West Bank engages with the 'mundane' materialities of law (the pine tree and the olive tree) and how these localised legal issues become embedded within wider political conflict. Therefore, developing an understanding of the materiality of law not only assists with understanding the multiple actants that have agency to produce law but also how these legal materialities become enwrapped within wider political meanings and processes of marginalisation (c.f. Braverman 2009). In the next section, I introduce the case study of Ak Jar, an illegal settlement on the outskirts of Bishkek in order to explore the linkages between the temporality of law and the concept of assemblage.

4. Assembling legality in an illegal space: the case of Ak Jar, Bishkek

During my last field visit to Bishkek, the settlement of Ak Jar, which formed a component of my wider research on internal migration and property rights in Kyrgyzstan, remained, officially, at least, 'illegal.' In this section, I examine several 'events,' 'performances', or 'doings' (McFarlane, 2011a) that blur this categorisation of 'illegal' with 'legal'. I aim to present certain aspects of what I refer to as a *legal* assemblage by focusing on 'localised' and empirically grounded events that unfolded during my field research in Kyrgyzstan. In doing so, I draw on both material and non-material actants as well as the temporality and ephemeral appearances of such actants to demonstrate the diverse and changing constituents of the legal assemblage.

The empirical aspects of the assemblage are discussed in three parts with each part involving a temporal 'event' in the assemblage. First, I discuss, territorialisation, second, an entrenchment of this territorialisation, and third, de-territorialisation, and re-territorialisation (Deleuze and Guattari, 1987; DeLanda, 2006). As DeLanda (2006) notes, the concept of

territorialisation needs to be understood literally through establishing well-defined borders. Therefore, territorialisation is understood to be the practice of 'squatting' the land and then dividing it for sale and also the ongoing lack of intervention from the state to control or dispel the 'land grabbers' and the migrants who eventually started building properties on the land. The assemblage therefore becomes gradually stabilised. This territorialisation becomes further entrenched following the 2010 unrest whereby the residents gain further recognition by the state leading to an increasing stabilisation of the assemblage. This is followed by an examination of deterritorialisation and reterritorialisation. As Rosin et al (2013, 237) note "[u]nderneath an established territory, ongoing processes to dissipate – and escape from – an established assemblage (deterritorialisation) are usually followed by a countermovement to build and stabilise a new assemblage (reterritorialisation)". This two-fold movement is what Deleuze and Guattari (1987) refer to as 'lines of flight' and 'lines of articulation' (ibid.). In Ak Jar, the material characteristics of the settlement begin to play an important role in destabilising the assemblage (de-territorialisation). As a means of countering this, some of the residents have proposed a new draft plan, which has split the settlement into two separate groups (re-territorialisation). This is followed by a discussion linking the empirical material on illegality to the conceptual aspects of assemblage introduced in the previous section.

1. Territorialisation: establishing the boundaries

Following the 2005 Tulip Revolution, the settlement gradually emerged through the incremental construction of properties built by migrants who had either arrived from other areas of Kyrgyzstan and were searching for employment in the city or had moved to the city earlier and were renting property around Bishkek. While Ak Jar was never advertised as 'illegal' by the land grabbers who began selling the land, the noticeable lack of any urban infrastructure – roads, electricity, running water – made purchasing land in the city finally possible for some. While some individuals immediately started to build their own homes by drying the mud of the land to form bricks, others purchased plots but only built the foundations of the property as a material marker of their ownership, planning to return to the settlement once electricity and water had been installed (see Figure 6). As the current residents emphasised in the interviews, the 'land leaders' who were selling individual parcels of land promised each of the purchasers that electricity and water would be installed within three months. The residents also noted, these 'land leaders', after selling all or most of their respective plots, disappeared without a trace.

Between 2005 and 2010, the settlement remained without electricity and water. Moreover, because the residents had no recognised property in the city, they were unable to obtain – officially, at least – a city residence permit (*propiska*). The *propiska* entitles urban residents registered with the local authorities to access medical services and schools in Bishkek free of charge. Without this form of identification, access is restricted, leaving individuals to rely on personal contacts or to pay bribes to low-paid schoolteachers and doctors (see Hatcher and Balybaeva, 2013).[84]

Figure 6: Individual properties in Ak Jar with the foundations of one property in the foreground (Hatcher, 2011).

In 2010, Bishkek was again thrown abruptly into urban unrest. The second storming of the parliament building in five years resulted in the ousting of President Bakiyev and the formation of an interim government led by President Rosa Otunbayeva and Prime Minister Alamzbek Atambayev. While reports on the 2005 Tulip Revolution describe what seems to be a planned event, the 2010 unrest was characteristically more spontaneous without the level of organisation of the previous unrest (Reeves, 2010). As with the 2005 Revolution, land rights became a salient topic during the unrest as protestors complained, in front of television news' cameras, about the lack of housing in the city and the need for land to be given to the 'people' (Reeves, 2010). Just as the protestors of the 2005 unrest are linked to a population of internal migrants who were living in rented accommodation around Bishkek, a connection is often also made between

[84] Even with a *propiska* respondents usually had to pay a bribe but usually the amount agreed was lower than someone without a *propiska*.

the bloody events of the 2010 unrest and the residents of the *novostroikas* on the outskirts of the city (Nasritdinov et al., 2012). These are the new arrivals (*priezzhie*) to the city, perceived by the older, more established residents of the city to threaten the legal as well as cultural and social order of Bishkek (Flynn and Kosmarskaya, 2012).[85]

2. Entrenching territorialisation

The 2010 unrest marked a political and legal turning point for the settlement. Ak Jar was developing a form of political authority within the wider state politics of Kyrgyzstan through the residents' potential to cause further unrest in the city. The residents had played a part in installing Bakiyev in power, yet they had also, through a more violent interaction with the state, succeeded in ousting him when the hopes of the 'Revolutionary government' failed to materialise. The political authority of the settlements on the outskirts of the city was a concern for the new government. Therefore, when the residents of Ak Jar blocked a main road nearby to the settlement in November 2010, the government needed to respond. The residents blocked the main arterial road which connected to one of the main trading points in Central Asia, the Dordoy *bazaar,* and was a major route to the Kazakh city of Almaty. Through this protest, the residents demanded an improvement of their living conditions in the settlement and, in particular, the installation of electricity and water together with legal status.

It was one of the first things I noticed during my visit to Ak Jar in 2011, a line of electricity pylons had been erected along approximately half of the main road of the settlement (see Figure 7). Each one, however, stood on its own, disconnected, with no power lines connecting each of the pylons to the individual houses of the settlement. Despite the 'emptiness' of the pylons, there was an anticipation of change through the expectation of the eventual installation of electricity, although none of the residents knew when the electricity would be installed and which organisation would also be responsible for the installation. One of the residents I spoke to informed me that the Prime Minister, Atambayev was responsible for the installation of the pylons, although there was not enough money in the federal budget for the installation to extend along the entire length of the main road. At the time, I found the installation of the pylons through the support of a state agent surprising given that the ownership of land was under judicial review in the courts of Bishkek. The court case was set to

[85] As Sanghera et al. (2012) notes, there were approximately 40 men involved in the uprising from Ak Jar, one of whom was killed during the protests.

determine whether the apparent owner of the land, a local politician, received the land from a local administrative district through the correct legal procedures following a transfer of the land in the mid-1990s. I returned frequently to the settlement between April and the end of June 2011 and, on my last visit, the pylons continued to remain disconnected with the residents having no idea if, and when, they would receive electricity, it was beginning to seem increasingly unlikely.

Figure 7: Line of disconnected electricity pylons (Hatcher, 2011).

In August 2011, shortly after I had left Kyrgyzstan, the residents of Ak Jar began to protest again over their poor living conditions and the illegal status by blocking the main road adjacent to the settlement. This time they demanded the Prime Minister, Atambayev, come to the settlement to see the living conditions for himself. Atambayev was in the running for President in the forthcoming elections in October and, as one political analyst said:

> "The presidential election is near and the people [the residents] know that at the present time it is possible to negotiate conditions with the candidates who may be interested in the discontent of the residents and use them for their campaign."

Moreover, there were underlying concerns that the protests could spark a ripple effect among some of the other settlements in the city. A few days later, Atambayev visited Ak Jar promising to include the settlement within

the governance structure of the municipality of Bishkek and to even transfer state assets from shares in a gold company to the infrastructure work of the settlement (Osmongazieva, 2010). Again, in October 2011, three days before the presidential election, Atambayev visited Ak Jar and made the same promises, this time wearing a traditional Kyrgyz hat and coat that the residents had given to him as a present.

By the end of 2011, electricity and water were installed in parts of the settlement. Atambayev was elected president and subsequently fulfilled his promise of organising infrastructural upgrades. This resulted in the further informal expansion of the settlement with more individuals purchasing land, joining their families who had already been living there, or by returning to land they had previously bought to complete the building of their property. Moreover, by my final visit in September 2013, one of the administrators (*kvartal'nyi*) of the settlement who was responsible for the registration of new residents, noted that Atambayev had also organised a doctor solely for the residents of the settlement in a neighbouring *novostroika* and had organised places for children in a school in neighbouring, Kelichek, a *novostroika* established in the 1990s. This circumvented the *propiska* issue of the residents, who could only officially acquire one of these if the settlement and their individual properties were legalised. While this partly reduced the importance of legalising the settlement, it did not deter the residents in continuing to demand legalisation of the settlement.

3. De-territorialisation and Re-Territorialisation: geology and splits

During my last visit to Bishkek, I visited and spoke to all the individuals that were involved in the legalisation process at this current time. Atambayev, although still President of the country, had become decisively absent from discussions during my interviews and had faded out of importance in relation to the legalisation process of the settlement. This time, the administrative district council, the Ministry of Construction, and the planning department associated with the Ministry of Construction, were names of organisations circulating among each of the other organisations and the residents of the settlement.

During the meeting introduced at the beginning of this article, the head of the planning department pointed to a certificate from the Seismology Institute of the Academy of Sciences, declaring that the land that forms Ak Jar is seismically unsafe for any form of building construction. The municipal authorities had previously allocated the land for housing construction during the Soviet era but abandoned these plans after carrying out geological tests in the area. Moreover, some of the residents had

constructed their properties above a gas pipeline running along the length of the settlement, while others were built underneath electro-transmission cables. It was therefore impossible for the head of the organisation to agree to the legalisation of the settlement noting that he would have to shoulder the 'responsibility' should there be any form of accident or natural disaster in the settlement.

In responding to this, there was an understanding that some of the residents were willing to sign a waiver agreement that would absolve responsibility of the state in the event of an earthquake.[86] Moreover, a splinter group of the residents collected money and employed an architect to draft a plan of the settlement to submit to the planning department for it then to be incorporated to the master plan of Bishkek. Thus, as a means of 'managing' (Farías, 2011) the gradual assemblage of legality, some of the residents split from those living in the 200 houses above the gas pipeline and a further 11 houses built underneath electro-transmission cables. By splitting from the other settlements, the splinter group hoped to improve their chances of eventually receiving titles for their properties through the legalisation of at least part of the settlement. This split has thus 're-territorialised' the assemblage by re-establishing the boundaries of the legalisation process to exclude those properties outside the so-called official 'red line' in being located above the pipeline and underneath the electro-transmission area.

5. Discussion: Illegality and assemblages of the material and non-material

In this section, I discuss conceptual aspects of assemblage and how they apply to the legalisation process of Ak Jar. This includes drawing on the relational ontology of assemblage by destabilising reified categories such as 'illegal' (Dittmer, 2013), and instead foregrounding the gradual piecing together of the legal through material and non-material components (McFarlane, 2011a). This illustrates the distributive agency between these material and non-material parts (Bennett, 2010), and demonstrates the non-linear temporality of the assemblage as components leave, enter, and re-enter (Acuto and Curtis, 2013).

Ak Jar remains, officially at least, 'illegal', yet analysing the material and non-material actants that come, at different times, to form a gradual and incremental assembling of the 'legal' disrupts the binary between 'legal' and 'illegal'. Thus, as Farías (2011, 369) notes, "the notion of assemblage

[86] From a personal discussion with a local planning expert. The residents were not willing to discuss this point.

involves no outside". Therefore, in destabilising the dualistic modes of thinking that separate the illegal from the legal by using the relational ontology (Castree, 2003) of the assemblage, illegality, rather than becoming the distinct 'other', is instead incorporated and constitutive of the legal. In understanding the *making* of law through the assemblage and the gradual alignment of multiple, heterogeneous material and non-material constituents over time breaks down categorisations that subsume legality with the state (Heyman and Smart, 1999), with illegality lying outside, and 'law' as a unitary and closed entity separate from society.

The material components play a consistently important role in assembling legality. Land, in particular, was an important demand of the protestors during the unrest in 2005 and 2010, resulting in the 'seizure' of land on the outskirts of the city in 2005. It was these acts of 'grabbing' the land that formed the initial bounded assemblage of the settlement that forms the case study of this paper (DeLanda, 2006). The 'illegality' of the settlement was produced through a material and non-material relationship over the demand for land by internal migrants moving from rural regions of the country. It became apparent, however, during my final visit in 2013, that the land itself and its localised physical characteristics – the soft clay – coupled with the *potential* event of a natural hazard such as an earthquake could be dangerous if the land, man-made structures of the housing, and the residents were brought together in a separate 'event' or assemblage. In assembling the legal, land becomes a component that refuses to collaborate (Swanton, 2013), emphasising that assemblages are not always successful, "objects and people can resist, or fail, or act unpredictably" (Blomley, 2013, 25). It is this resistance of the assemblage that produces a suspended interstitial space between 'legal' and 'illegal.'

This interstitial space is evident through the gradual development of the legal. The legal is pieced together by the gradual addition of material components over time. These material components signify a recognition from the state, demonstrating that the 'illegal' status of the settlement is operating with the state apparatus and is not 'external' to it (Farias, 2011). As the infrastructure develops in the settlement, through state authorisation, it becomes increasingly unlikely that the state will therefore evict the residents. A *de facto* security of tenure becomes apparent. Moreover, these material elements perform a degree of agency, even though their functionality is missing. Thus, the empty electricity pylons lining half the length of the main road to the settlement were not transmitting electricity, but their presence signified a turning towards legality for the settlement.

As well as signifying the gradual alignment of the 'legal' over a period of time, the material components were also playing an important political role. As McFarlane (2011b, 216-217) demonstrates in relation to informal settlements in Mumbai:

> "[M]aterial geographies are variously constituted by the state (e.g. through tacit permission or service provision) victimised by the state (e.g. through denial of rights or demolition) and operate in relation to the state (e.g. through personal, voting, and party political links, or as a source of unregulated cheap labour)"

It is this distributive agency across the social and material (Bennett, 2005; McFarlane, 2011), which becomes evident in Ak Jar. Following unrest in the city in 2005, there was an ongoing denial of material rights to the residents in terms of accessing public services such as schools and health clinics. In 2010, however, the perceived linkages between the political unrest and the residents of the settlements forming the urban periphery of Bishkek began to merge resulting in the material upgrading of the settlement. Following the road blockade in 2010, the erection of electricity pylons 'pacified' the residents – temporarily, at least – preventing any further unrest in the city at a time when the state was particularly 'weak' and vulnerable (Rasanayagam, et al., 2014). The promise of water and electricity formed an important part of Atambayev's election speech to the residents in 2011 and also a political bargaining tool in exchange for votes. These politico-material enactments also gradually reduced the importance of the 'illegal' status of the settlement, especially as the settlement was receiving the same level of material investment and state recognition as the legalised settlements that became part of the World Bank's infrastructure project.

The physical characteristics of the land also provide an example of how the 'vitality of matter' (Bennett, 2010) can result in the failure of the assemblage. Although the residents and other organisations were attributing the failure of the legalisation process to a human agent (the head of the planning department), material elements were, at least partly, hindering the legalisation process. As Bennett (2005, 463, author's emphasis) argues "[i]n emphasising the ensemble nature of action and the interconnections between persons and things, a theory of vital materialism presents individuals as simply incapable of bearing *full* responsibility for their effects." In drawing attention to the material components, it becomes apparent that the land must also share the responsibility for this blame. This also, in turn, shifts the framing of the issue from that being inherently 'political' to also 'ecological' (Bennett, 2010).

The fluidity and temporality of the assemblage is apparent in its ability to re-territoralialise after events of de-territorialisation (Deleuze and Guattari, 1987). As Li (2007, 265) notes, assemblage presents "failure as the outcome of rectifiable deficiencies, smoothing out contradictions so that they become superficial rather than fundamental." A 're-territorialisation' of the assemblage, by a 'splinter' group of the residents, resulted in the *detachment* of those properties built beyond the 'red line'. Therefore, the agency of law making did not just lie within the legal apparatus of the state but was appropriated by some of the residents to serve their own purposes, while the land also played a role in this re-assemblage of the legal process. Moreover, different components, within the non-linear system of the assemblage (Bennett, 2010), play different roles at different times. The court case deciding on the owner of the land once played an important role, together with Atambayev, the Prime Minister, at a later point, to the final stages of the fieldwork where the land and the plan of the settlement were beginning to play leading roles together with the head of the planning department. These components 'fade in' and 'fade out' of the law making process (Benda-Beckmann and Benda-Beckmann, 2014), with some remaining hidden altogether (Anderson et al., 2012).

Conclusion

If law is 'made' through the connections of the social and the material (Latour, 2010), I have attempted to develop this through the gradual assemblage of the 'legal' by examining different component parts aligning over time (McFarlane, 2011a). In using assemblage to think through law, I have offered three key formulations. First, I destabilised the boundaries that structure law in liberal thought and, notably, its separation and closure from society and the binary between legality and the state. Examining the 'mobile' character of the law and asserting its 'flows' and 'processes' introduced this merging of law and society and the de-coupling state from legality. Assemblage provides a conceptual tool for examining the mobility of law by drawing on how different components align over time to form the 'legal' (territorialisation), which in turn can fall apart again (deterritorialisation) and then partly come together again through a new configuration (reterritorialisation). Assembling the law therefore provides a conceptual tool for understanding the liminality of law and legal spaces as they fade in and out, recombine with older versions and linger (Benda-Beckmann and Benda-Beckmann, 2014).

Second, the placing together of different components to form legality occurs through the relationship between the material and non-material.

These components share a collective form of agency. Material actants have agency, therefore, over production of law and, reciprocally, the maintenance of illegality. The plan of the settlement, for example, played an important role for the residents in attempting to push forward the legalisation process, while the land as a barrier to this process faded in and out of importance at different points and in relation to other materialities such as the certificate from the Seismology Institute or the potential use of a waiver agreement. Non-material actants, in relationship with the material actants, also play a collective role in these co-productions of legality and legal space as agency is distribute among and across components (Bennett, 2010).

Finally, addressing the materialities of a legal assemblage develops a finer-grained understanding of political questions unfolding in the city. Why is the settlement illegal, and are the residents representative of a marginalised group in the city? Examining the relationship between the material and non-material develops a more nuanced of understanding of these questions and how such urban problems can be solved. As Farías (2011, 371) notes, "[u]rban politics is … not about subjects, subjectivities or discourse, but about things, complex entangled objects, socio-material interminglings." Moreover, in developing the potential of assemblage to respond to the task of critical urban theory through inquiry (rather than critique), McFarlane (2011b) examines how an assemblage approach though its empirical emphasis on different (urban) processes, which historically produce inequality, can enable the development of alternatives to challenge these conditions. The emphasis on assembling the law beyond the 'human' is particularly useful for understanding reasons behind illegality and, at times, the subsequent marginalisation of such legal 'outcasts' (Blomley, 2006; Wacquant 2008), which, partly at least, rests with the legal agency of material components.

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Policy Brief

Hatcher, C. and Balybaeva, A. (2013) Simplifying the propiska: Realising the benefits of internal migration

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Simplifying the *propiska*: Realising the benefits of internal migration

- Internal migration can improve the livelihoods of individuals, strengthen urban economies, and has the potential to promote small-scale rural development through remittances and linkages with cities.
- In Kyrgyzstan, the passport registration system (*propiska* in Russian), which regulates internal migration, is currently ineffective for the government and discriminates against internal migrants by restricting their social, economic, and political rights.
- Simplifying the existing passport registration system, harmonising conflicting legislation, and implementing an electronic system would give the government an effective resource-planning tool that would also ensure access to basic state services for internal migrants.

Introduction

Internal migration has the potential not only to improve the livelihoods of individual migrants but is increasingly gaining recognition for its role in contributing to the wider economic growth of many countries. Despite these positive aspects, restrictive state practices hindering internal migration continue to exist, to the detriment of internal migrants. Kyrgyzstan's population registration system demonstrates this. While the registration system has the potential to fulfil an effective budgetary and planning role for the government, in its current form it fails to do so and simultaneously restricts the rights of internal migrants.

Internal migration: a positive role

The *Human Development Report 2009* (UNDP 2009) estimated the global number of internal migrants to be close to 740 million, nearly four times the number of international migrants. As with international migrants, internal migrants commonly move in search of better pay, education, and health services. Kyrgyzstan is no exception to this phenomenon. A large number of migrants have moved from rural areas to urban areas, especially Bishkek, Kyrgyzstan's capital city and economic hub.

Policymakers are increasingly recognising that internal migration has a greater potential to reduce poverty and contribute to economic growth than does international migration (Deshingkar 2006; UNDP 2009). Urbanisation – as a result of internal migration – is perceived not only as inevitable, but also as a powerful force for economic growth as industries

cluster and benefit from economies of scale, exchange of knowledge and ideas, and a pool of skilled labour (World Bank 2009). Internal migration also builds linkages between rural and urban areas, particularly through the flow of remittances from internal migrants working in cities to their rural families, although there are few accurate data on this issue.

Restrictions to internal migration

Registration systems are used by governments throughout the world to count and record details about people and to know their whereabouts. The government needs to know how many people are living in a particular place in order to efficiently allocate state funds and resources. Such registration systems rely on individuals notifying the state authorities of any changes in their circumstances, while the government must ensure the notification process is straightforward (OSCE 2009).

Around a third of countries maintain de facto barriers to internal movement; Kyrgyzstan is one of these (UNDP 2009). The current passport registration system (formerly and still commonly known as *propiska*) is ineffective for the government and limits internal migrants' rights. While the ability to move from one place to another in the country is not restricted, problems occur when an internal migrant arrives in their new location; they have to undergo the bureaucratic process of registering their new place of residence or temporary stay with the local authorities. For the migrant, registration is required if they are to access various state services, such as schooling, health care, and social services, in their new place of residence. Migrants are also able to vote only where they are registered.

Problems and solutions

1. Rented apartments and novostroikas

Internal migrants living in Bishkek commonly rent a property and/or live in one of the city's newly built settlements (*novostroikas*) (see Figure 8). Some *novostroikas* remain 'illegal' and are therefore not officially part of the city. Those migrants who rent a property or live in an illegal *novostroika* find difficulty in providing proof of an address in order to register with the local authorities in the city. Residents living in Bishkek's illegal *novostroikas* have no recognised legal right to the land where their property is located, and thus cannot register at their property because it is not an officially recognised address.

Internal migrants who rent properties often do so under an informal arrangement with the property owner in order for the owner to avoid any formal agreement that could serve as proof of this taxable source of income. Property owners often also express a fear that an officially registered tenant will be able to claim part ownership of the property. A property owner therefore rarely agrees to a tenant registering at their property, unless they have a close relationship with each other (e.g. a family member).

Internal migrants who rent properties or live in an illegal *novostroika* therefore often fail to register with the authorities. This creates problems for both the internal migrant and the government. The internal migrant is unable to officially access basic state services and cannot vote in Bishkek, whereas the government is unaware of the actual number of people living in particular areas of Kyrgyzstan and therefore cannot budget or direct state resources efficiently.

Figure 8: A *novostroika* on the outskirts of Bishkek (Hatcher, 2011).

The government should address the issue of many internal migrants who rent and/or live in one of Bishkek's illegal *novostroikas*. Those internal migrants who rent should be able to register at the address where they live without having to obtain permission from the property owner. Although residents of illegal *novostroikas* have no officially recognised property to register against, article 16(4) of the Kyrgyz Law of Internal Migration 2002 (IM 2002) provides that citizens without a "permanent residence" can register at the address of the local authority where they reside. This

provision should be invoked and a mechanism implemented to allow residents living in the city's illegal *novostroikas* to register at the address of the local authority.

2. Conflicting laws

Discrepancies between different pieces of legislation relating to the registration system invite corruption and undermine the effectiveness of the law. The IM 2002 clearly sets obligations on behalf of the migrant and the state, but other laws, regulations and decrees conflict with this. For example, whereas the IM 2002 requires an internal migrant to submit three documents in order to register their new address, other pieces of legislation require more. In reality, local administrative offices request up to 12 types of document, making the registration process onerous for internal migrants (see Figure 9).

Figure 9: People queuing in a local passport registration centre in Bishkek (Hatcher, 2011).

A vast and unsystematic framework of other pieces of legislation undermines the effectiveness and transparency of the IM 2002. Decisions also need to be made by the government in respect of whether registration is required to access certain state services or not. If the registration system were simpler and transparent, there is no reason why the government should not require people to be properly registered to receive state services.

3. Paper-based bureaucracy

The existing registration system is heavily paper-based and uncoordinated nationally as there is no centralised system or database. This can create problems of inaccurate and missing data. Internal migrants are required to attend many different offices to obtain various documents and, when moving permanently to a new location, must deregister in person from their previous place of residence, which can be both time-consuming and expensive. Deregistration by the migrant in person is also contrary to the IM 2002 and should be done by the registering authorities, although this is often ignored in practice.

The State Registration Service (the state organisation responsible for the passport registration system) should pursue existing recommendations to implement an electronic population register (OSCE 2012). A centralised electronic system would make the process of registration easier for internal migrants by, for example, removing the need to deregister from the previous place of residence in person. An electronic system would also ensure data are more accurate and properly maintained, therefore providing a useful data set for the government to use for planning purposes.

Policy implications of North-South research

Internal migration is beneficial

While it may be tempting to perceive internal migration as a drain on urban resources (especially in Bishkek), internal migrants contribute to the country's wider economic growth. Internal migrants not only improve their own livelihoods but, by sending remittances to their families in rural areas, they also promote small-scale rural development. Internal migration also strengthens urban economies as industries cluster and benefit from economies of scale, exchange of knowledge and ideas, and a pool of skilled labour.

Passport registration system

A simplified passport registration system would: (1) provide useful statistical data for the government to plan and budget effectively, thereby reducing pressure on services in urban areas such as Bishkek; (2) ensure that internal migrants can easily access state services officially where they are living rather than acquiring access informally through corrupt practices or not being able to access these services at all.

Intervention

Simplification of the existing passport registration system has three core requirements: (1) allow tenants and residents of *novostroikas* to register at the property where they actually live by eliminating the need to obtain permission from the property owner, and allow residents of illegal *novostroikas* to register at the address of the local authority; (2) ensure that conflicting laws relating to the registration system are harmonised so that the system is simple, open, and transparent; and (3) implement an electronic system to assist in maintaining an accurate and reliable data set for government planning that makes registration easier for internal migrants.

Features Case studies

Woman renting shop in a novostroika in Bishkek

Farida and her husband moved to Bishkek from the southern *oblast'* of Jalal-Abad four years ago in search of work. She originally rented a small house in a *novostroika* with her husband, but the property owner eventually wanted to take back possession. Farida now sleeps on the floor of the shop that she rents and where she works. She is unable to register herself in Bishkek because she has no official address. The local school will not accept her four children because she is not registered in Bishkek. All the children therefore live with relatives in Jalal-Abad. Farida is also unable to obtain child support in Bishkek because she is not registered in the city. The authorities in Jalal-Abad also refuse to grant her child support because she has been living in Bishkek for four years and has no property in Jalal-Abad (Hatcher, in preparation).

Family living in an illegal novostroika in Bishkek

Umut lives in an illegal *novostroika* in Bishkek. She moved there with her husband and two children in 2006 because they could no longer afford to pay rent for an apartment in the city. Umut and her husband are unable to register their address in the *novostroika* because of the settlement's illegal status. Their unregistered status made it difficult to organise schooling for their children but eventually this was organised through personal connections and an informal payment (Hatcher, in preparation).

Definitions

*Internal migration***:** Human movement within the borders of a country, usually measured across regional, district, or municipal boundaries (UNDP 2009).

Registration system: Referred to as *propiska* in Kyrgyzstan during the Soviet era and still commonly referred to as such today, this system requires citizens to register their place of residence with state authorities. The information is then used in planning and delivery of state services and to contact people. A registered address can "determine a person's eligibility to vote, to access education and health care, and to receive social services or a pension" (OSCE 2009).

Novostroika: Meaning "new settlement," these unplanned settlements are located on the periphery of a city. Most of Bishkek's "illegal" *novostroikas* are less than ten years old.

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Appendices

Appendix One

Kyrgyz Legislation analysed (in hierarchical order):

Constitutions

Constitution of Kyrgyz Autonomous Soviet Socialist Republic, 30 April 1929
Constitution of Kyrgyz Autonomous Soviet Socialist Republic, 23 March 1937
Constitution of Kyrgyz Soviet Socialist Republic, 20 April 1978
Constitution of Kyrgyz Republic, 5 May 1993
Constitution of Kyrgyz Republic, 27 July 2010

Codes

Civil Code of Kyrgyz Republic, Part I, 8 May 1996, N. 15
Civil Code of Kyrgyz Republic, Part II, 5 January 1998, N.1
Labour Code of Kyrgyz Republic, 4 August 2004, N. 106
Administrative Code of Kyrgyz Republic, 4 August 1998, N. 114
Land Code of Kyrgyz Soviet Socialist Republic, 2 July 1971, N. 429-XII
Land Code of Kyrgyz Republic, 2 June 1999, N. 45
Housing Code (draft) 2004

Laws

Law on state security, 11 January 1994, N. 1362-XII
Law on state guarantees and compensation for those living and working in conditions of high and remote areas, 28 June 1996, N. 33
Law on Pensions, 21 July 1997, N. 57
Law on Homeowner Associations, 28 October 1997, N. 77
Law on state benefits, 5 March 1998, N. 15
Law on foundation of social services, 19 December 2001, N. 111
Law on privatisation of state property, 2 March 2002, N. 31
Law on Internal Migration, 30 July 2002, N. 133
Law on education, 30 April 2003, N. 92
Law on military service, 9 February 2009, N. 43
Law on electronic documents and digital signature, 2 November 2009, N. 290
Law on state allowances, 29 December 2009, N. 138

Decrees

Decree of Government of Kyrgyz Republic on Passport System, 17 October 1994, N. 775
Decree of Parliament of Kyrgyz Republic on the reception and distribution of internal cases for those who have no fixed place of residence, 19 January 1998, N. 42
Decree of Bishkek City Mayor on rules for temporary registration of citizens living in Bishkek, 23 May 1998, N. 285-a.
Decree of Government of Kyrgyz Republic on temporary and permanent residence, 8 June 2000, N. 324.
Decree of the Mayor's Office on rules of town planning, 6 July 2001 N. 71
Decree of Government on approval of the identity card of citizens of the Kyrgyz Republic, 22 May 2004, N. 375
Decree of Government on the passport of a citizen of the Kyrgyz Republic, 27 July 2004, N 557
Decree of Government about rules of registration and removal of citizens of Kyrgyz Republic from registration of place of residence, 4 December 2004, N. 886
Decree of Government on State Committee for Migration and Employment, 21 December 2005, N. 603
Decree of Bishkek City Council on development of the city of Bishkek, 28 January 2008, N. 387
Decree of Government on the organisation of cooperatives, 17 April 2008, N.326-IV
Decree of Government on the certificate of return to the Kyrgyz Republic, 30 July 2008, N. 407
Decree of Government on approval of registration procedure, 20 June 2011, N. 332
Decree of Ministry of Interior on the procedure for temporary and permanent registration

Appendix Two

An overview of conducted interviews in Kyrgyzstan during 2011, 2012, and 2013 field visits. The tables show the number of total interviews, some of these were also repeat interviews with the same informant to establish any changes from data collected the previous year.

Interviews in *novostroikas*

Novostroika	Informants	Amount
Ak Jar	Residents Kvartal'nyi	15
Kelechek	Director of local school Doctors at health clinic	2
Ak Ordo	Residents (owners and tenants)	9
Kalys Ordo	Residents (owners and tenants)	5

Interviews with local and international NGOs

NGO	Informants	Amount
Erayim	Chairperson and employee	2
Arysh	Chairperson and lawyer	5
Adilet	Lawyers	5
Central Asian Free Market Institute	Chairperson, lawyer, media expert	3
Children's Protection Centre	Chairperson, deputy chairperson	2
Social Research Centre	Researchers	5
Independent Human Rights Group	Human Rights/Legal Expert	2
American Bar Association	Staff Attorneys	2
Red Crescent Society	Head of Programme	3
Danish Church Aid	Head of Programme	2

Government and local government workers

Organisation	Informant	Amount
Central State Registration Centre	Director, employee	2
State Registration Service (SRS)	Deputy Chairperson	1
Metropolitan Territorial Administration	Chairpersons	2
District Passport Agencies	Employees	4
District Passport Agency	Head	1
Parliamentary Committee	Head	1

on Social Protection, Labour and Migration		
Department of Migration and Labour	Head of Field Employment Service	2
National Statistical Committee	Head and statisticians	3
Kyrgyz Planning Institute	Head	1
Department for Individual Housing	Deputy director	1
Regional State Administration	Deputy Director and Employee	2

Interviews with Housing Management Organisations

Organisation	Informant	Amount
Homeowner Associations and Private Management Companies	Chairpersons	8

Conference/Roundtable Attendance

Conference	Organisation	Year
Propiska: Is there a need? Influence of resident permit on citizens rights In Kyrgyzstan	Adilet Danish Church Aid State Registration Service	2011
Passport without problems	Open Society	2011
Roundtable on Propiska Issues	Central Asian Free Market Institute	2011
Roundtable on issues in Novostroikas	Red Crescent Society	2012